

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
 89 SOUTH CALIFORNIA ST., SUITE 200
 VENTURA, CA 93001
 (805) 585 - 1800



Filed: 4/23/06
 49th Day: 6/11/06
 180th Day: 10/20/06
 Staff: LF-V
 Staff Report: 9/28/06
 Hearing Date: 10/12/06
 Commission Action:

Th 22c

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-05-153

APPLICANT: Stoney Heights, LLC

PROJECT LOCATION: 2151 Puerco Motorway, Santa Monica Mountains (Los Angeles Co.)

APN NO.: 4457-005-016

PROJECT DESCRIPTION: Construction of a two-story, 6,221 sq. ft. single family residence, 566 sq. ft. detached three-car garage, two-story, 690 sq. ft. guesthouse, swimming pool, well, water tank, septic system, landscaping (including vegetated screening to the north and west of the proposed residence), driveway, as-built stabilization of an existing oak tree, and approximately 1,590 cu. yds. of grading (1290 cu. yds. cut, 300 cu. yds. fill). The proposed project also includes improvements to an existing approximately 1.36 mile long dirt access road (Puerco Motorway), including paving, widening, construction of retaining walls, drainage improvements, and turnarounds, and approximately 10,050 cu. yds. of grading (8,050 cu. yds. cut, 2,000 cu. yds. fill). The proposed project also includes an offer to dedicate a 10 ft. wide, approximately 1,036 ft. long non-exclusive public trail easement.

Lot area	40 acres
Building coverage	5,728 sq. ft.
Pavement coverage (residence)	15,503 sq. ft.
Pavement coverage (road)	approx. 4.99 acres
Landscape coverage	26,120 sq. ft.
Height Above Finished Grade	27 ft.
Parking spaces	3

STAFF NOTE

This application was filed on April 23, 2006. Under the provisions of the Permit Streamlining Act, the latest possible date for Commission action is October 20, 2006. As such, the Commission must act on Application No. 4-05-153 at the October 2006 Hearing.

LOCAL APPROVALS RECEIVED: County of Los Angeles Department of Regional Planning, Approval in Concept, August 10, 2005; County of Los Angeles Environmental Health Services, Sewage Disposal System Design Approval, July 6, 2005; County of Los Angeles Environmental Health Services, Well Work Plan Approval, July 6, 2005; County of Los Angeles Fire Department, Preliminary Fuel Modification Plan Approval, October 27, 2005; County of Los Angeles Fire Department, Fire Prevention Engineering Approval, September 21, 2006.

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu/Santa Monica Mountains Land Use Plan (1986); "Geologic/Geotechnical Engineering Report, Proposed Single Family Residence," Gold Coast Geoservices, Inc., August 21, 2005; "Response to Environmental Health Division Review Letter for Proposed Septic System for Planned Single Family Residence," Gold Coast Geoservices, Inc., June 15, 2005; "Response to Environmental Health Division Review Letter for Proposed Septic System for Planned Single Family Residence," Gold Coast Geoservices, Inc., June 15, 2005; "Percolation Test Results and Septic System Design Report for Proposed Single Family Residence and Guest Suite," Gold Coast Geoservices, Inc., March 25, 2005; "Biological Resources Assessment," Steven Nelson, Consulting Biologist, November 2005; Addendum to Oak Tree Report - LNDG Project No. 2219-04, John Oblinger, Arboricultural Consultant, L. Newman Design Group, Inc., February 15, 2005; Letter re: Puerco Motorway, APN 4457-005-016 - LNDG Project No. 2219-04, John Oblinger, Arboricultural Consultant, L. Newman Design Group, Inc., November 30, 2004; Letter re: Puerco Motorway Project, Project Number R2004-00831, Utilization of GravelPave2 on an Existing Dirt Road within the Protected Zone of Coast Live Oak Trees, County of Los Angeles Fire Department (Forestry Division), July 1, 2005.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **APPROVAL** of the proposed project with **EIGHTEEN (18) SPECIAL CONDITIONS** regarding (1) geologic recommendations, (2) drainage and polluted runoff control, (3) landscaping and erosion control plans, (4) assumption of risk, (5) structural appearance, (6) future development, (7) lighting restriction, (8) deed restriction, (9) habitat impact mitigation, (10) removal of excess excavated material, (11) removal of natural vegetation, (12) oak tree monitoring, (13) open space conservation easement, (14) pool and spa drainage and maintenance, (15) offer to dedicate public hiking and equestrian trail easement, (16) revised plans, (17) condition compliance, and (18) public rights.

The project site is a vacant 40-acre parcel located in the Santa Monica Mountains east of Corral Canyon Road. The project site is located in a scenic area, adjacent to public open space and recreation areas and will be visible at a distance from the Backbone Trail and Mesa Peak Motorway, as well as from Corral Canyon Road, a designated scenic road in the certified Malibu/Santa Monica Mountains Land Use Plan (LUP). The parcel is accessed by an existing approximately 1.36 mile-long dirt access road.

The parcel is undeveloped with the exception of the portion of the dirt access road that crosses the property, and approximately 50% of the proposed building site, which was previously denuded of ESHA prior to the effectiveness date of the Coastal Act and has not recovered. The undeveloped portions of the property contain undisturbed native chaparral and oak woodland vegetation contiguous with a larger area of native chaparral and oak woodland habitats. Therefore, with the exception of the existing access road the entire site is considered an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5 of the Coastal Act.

The proposed development is located adjacent to the existing access road and the southern property line, on a site that minimizes grading and disturbance of ESHA. However, construction of the residence will still require the removal of chaparral ESHA both within the approximately 9,541 sq. ft. development footprint and within the area of fuel modification and brush clearance required by the Los Angeles County Fire Department for fire protection purposes. In addition, construction of the residence will require substantial improvements to be made to an existing approximately 1.36 mile long access road within chaparral and oak woodland ESHA in order to meet Los Angeles County Fire Department access standards. Standing alone, Section 30240 would require denial of the proposed development to prevent adverse impacts to ESHA from the proposed fuel modification required for construction of the proposed residence, and from the proposed access road improvements. However, Section 30010 provides that the Commission cannot construe the Coastal Act as authorizing the Commission to deny a permit in a manner that will take private property for public use. To avoid a “taking” of private property, the Commission must allow a reasonable residential development on the applicant’s parcel.

The standard of review for the proposed project is the Chapter Three policies of the Coastal Act. In addition, the policies of the certified Malibu – Santa Monica Mountains Land Use Plan (LUP) serve as guidance. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve Coastal Development Permit No. 4-05-153 pursuant to the staff recommendation.*

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve the Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Plans Conforming to Geologic Recommendations

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the submitted geologic reports ("Geologic/Geotechnical Engineering Report, Proposed Single Family Residence," Gold Coast Geoservices, Inc., August 21, 2005; "Response to Environmental Health Division Review Letter for Proposed Septic System for Planned Single Family Residence," Gold Coast Geoservices, Inc., June 15, 2005; "Response to Environmental Health Division Review Letter for Proposed Septic System for Planned Single Family Residence," Gold Coast Geoservices, Inc., June 15, 2005; "Percolation Test Results and Septic System Design Report for Proposed Single Family Residence and Guest Suite," Gold Coast Geoservices, Inc., March 25, 2005). These recommendations, including those concerning construction, foundations, grading, site design, retaining walls, sewage disposal, erosion control, and drainage, shall be incorporated into all final design and construction, and must be reviewed and approved by the consultant prior to commencement of development.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, sewage disposal, and drainage. Any substantial changes in the proposed development approved by the Commission that may be required by the consultant shall require amendment(s) to the permit(s) or new Coastal Development Permit(s).

2. Drainage and Polluted Runoff Control Plans

Prior to the Issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and written approval, two sets of final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site and access road. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

3. Landscaping and Erosion Control Plans

Prior to issuance of a coastal development permit, the applicants shall submit two sets of landscaping and erosion control plans, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. Prior to submittal, the landscaping and erosion control plans shall be reviewed and approved by the geotechnical engineering and geologic consultant to ensure that the plans are in conformance with the consultant's recommendations. The plans shall identify the species, extent, and location of all plant materials and shall incorporate the following criteria:

A. Landscaping Plan

- (1) All graded and disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled *Recommended List of Plants for*

Landscaping in the Santa Monica Mountains, dated February 5, 1996. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.

- (2) All cut and fill slopes and all disturbed areas along the access road shall be stabilized with planting at the completion of final grading. Plantings should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils.
- (3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- (4) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.
- (5) Vegetation within 20 feet of the proposed house may be removed to mineral earth, vegetation within a 200 foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. Fuel modification and brush clearance shall be minimized to the maximum extent feasible, consistent with minimum vegetation clearance requirements of the Forestry Department of Los Angeles County. Brush clearance along the access road shall be minimized to the maximum extent feasible, consistent with Los Angeles County brush clearance requirements. The applicant shall submit evidence that the final fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County. Irrigated lawn, turf and ground cover planted within the twenty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.
- (6) Fencing of the entire property is prohibited. Fencing shall extend no further than the building pad area as generally shown on **Exhibit 3**. The fencing type and location shall be illustrated on the landscape plan. Fencing shall also be subject to the color requirements outlined in Special Condition Five (5) below.
- (7) Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.

B. Interim Erosion Control Plan

- (1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.
- (2) The plan shall specify that grading shall take place only during the dry season (April 1 – October 31). This period may be extended for a limited period of time if the situation warrants such a limited extension, if approved by the Executive Director. The applicant shall install or construct temporary sediment basins (including debris basins, desilting basins, or silt traps), temporary drains and swales, sand bag barriers, silt fencing, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible. These erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.
- (3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

C. Monitoring

Five (5) years from the date of completion of the proposed development, the applicant shall submit for the review and approval of the Executive Director a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that assesses the on-site landscaping and certifies whether it is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to these permits, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The supplemental landscaping plan must be prepared by a licensed landscape architect or qualified resource specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The permittee shall implement the remedial measures specified in the approved supplemental landscape plan.

4. Assumption of Risk

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from landslide, erosion, earth movement, and wildfire; (ii) to assume the risks

to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

5. Structural Appearance

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of Coastal Development Permit No. 4-05-153. The palette samples shall be presented in a format not to exceed 8½" x 11" x ½" in size. The palette shall include the colors proposed for the roof, trim, exterior surfaces, driveways, retaining walls, and any other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass. Retaining walls shall be surfaced to mimic the surrounding landscape.

The approved structures shall be colored with only the colors and materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by Coastal Development Permit No. 4-05-153 if such changes are specifically authorized by the Executive Director as complying with this special condition.

6. Future Development

This permit is only for the development described in Coastal Development Permit No. 4-05-153. Pursuant to Title 14 California Code of Regulations §13250(b)(6) and §13253(b)(6), the exemptions otherwise provided in Public Resources Code §30610(a) and (b) shall not apply to the entire parcel. Accordingly, any future improvements to the entire property, including but not limited to the residence, garage, guesthouse, driveway, swimming pool, access road (on-site and off-site), and clearing of vegetation or grading other than as provided for in the approved fuel modification/landscape plan prepared pursuant to **Special Condition Three (3)**, shall require an amendment to Coastal Development Permit No. 4-05-153 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

7. Lighting Restriction

A. The only outdoor night lighting allowed on the subject parcel is limited to the following:

- (1) The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.
 - (2) Security lighting attached to the residence and garage shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60 watt incandescent bulb.
 - (3) The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60 watt incandescent bulb.
- B. No lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed.

8. Deed Restriction

Prior to issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

9. Habitat Impact Mitigation

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a map delineating all areas of chaparral habitat (ESHA), that will be disturbed by the proposed development, including fuel modification and brush clearance requirements on the project site and adjacent properties, and on-site and off-site access road improvements. The chaparral ESHA areas on the site and adjacent properties shall be delineated on a detailed map, to scale, illustrating the subject parcel boundaries and adjacent parcel boundaries. The delineation map shall indicate the total acreage for all chaparral ESHA, both on-site and off-site, that will be impacted by the proposed development, including the fuel modification/brush clearance areas and access road improvements (including road relocation). The extent of off-site brush clearance shall be determined using the following standards: A 200-foot clearance zone from the proposed residential structures and a ten-foot wide clearance zone immediately parallel to and on either side of the proposed access road, which shall be increased to 20 feet on the downslope side of the mid-slope portion of the proposed access road (which is bounded approximately by station 1700 and station 7400 as

shown on the submitted grading plans). The delineation shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains.

Mitigation shall be provided for impacts to the chaparral ESHA from the proposed development and fuel modification/brush clearance requirements by one of the three following habitat mitigation methods:

A. Habitat Restoration

1) Habitat Restoration Plan

Prior to the issuance of the coastal development permit, the applicant shall submit a habitat restoration plan, for the review and approval of the Executive Director, for an area of degraded chaparral habitat equivalent to the area of chaparral ESHA impacted by the proposed development and fuel modification and brush clearance areas. The habitat restoration area may either be onsite or offsite within the coastal zone in the City of Malibu or in the Santa Monica Mountains. The habitat restoration area shall be delineated on a detailed site plan, to scale, that illustrates the parcel boundaries and topographic contours of the site. The habitat restoration plan shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains, and shall be designed to restore the area in question for habitat function, species diversity and vegetation cover. The restoration plan shall include a statement of goals and performance standards, revegetation and restoration methodology, and maintenance and monitoring provisions. If the restoration site is offsite the applicant shall submit written evidence to the Executive Director that the property owner agrees to the restoration work, maintenance and monitoring required by this condition and agrees not to disturb any native vegetation in the restoration area.

The applicant shall submit, on an annual basis for five years, a written report, for the review and approval of the Executive Director, prepared by a qualified resource specialist, evaluating compliance with the performance standards outlined in the restoration plan and describing the revegetation, maintenance and monitoring that was conducted during the prior year. The annual report shall include recommendations for mid-course corrective measures. At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has been in part, or in whole, unsuccessful, based on the approved goals and performance standards, the applicant shall submit a revised or supplemental restoration plan with maintenance and monitoring provisions, for the review and approval of the Executive Director, to compensate for those portions of the original restoration plan that were not successful. A report shall be submitted evaluating whether the supplemental restoration plan has achieved compliance with the goals and performance standards for the restoration area. If the goals and performance standards are not met within 10 years, the applicant shall submit an amendment to the coastal development permit for an alternative mitigation program.

The habitat restoration plan shall be implemented prior to occupancy of the residence.

2) Open Space Deed Restriction

No development, as defined in section 30106 of the Coastal Act shall occur in the habitat restoration area, as shown on the habitat restoration site plan, required pursuant to (A)(1) above.

Prior to the issuance of the coastal development permit, the owner of the habitat restoration area shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development and designating the habitat restoration area as open space. The deed restriction shall include a graphic depiction and narrative legal descriptions of both the parcel and the open space area/habitat restoration area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

3) *Performance Bond*

Prior to the issuance of the permit, the applicant shall post performance bonds to guarantee implementation of the restoration plan as follows: a) one equal to the value of the labor and materials; and b) one equal to the value of the maintenance and monitoring for a period of 5 years. Each performance bond shall be released upon satisfactory completion of items (a) and (b) above. If the applicant fails to either restore or maintain and monitor according to the approved plans, the Coastal Commission may collect the security and complete the work on the property.

B. Habitat Conservation

Prior to issuance of the coastal development permit, the applicant shall execute and record an open space deed restriction in a form and content acceptable to the Executive Director, over a parcel or parcels containing chaparral ESHA. The chaparral ESHA located on the mitigation parcel or parcels must be of equal or greater area than the ESHA area impacted by the proposed development, including the fuel modification/brush clearance areas. No development, as defined in section 30106 of the Coastal Act, shall occur on the mitigation parcel(s) and the parcel(s) shall be preserved as permanent open space. The deed restriction shall include a graphic depiction and narrative legal descriptions of the parcel or parcels. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.

Prior to occupancy of the residence the applicant shall submit evidence, for the review and approval of the Executive Director, that the recorded documents have been reflected in the Los Angeles County Tax Assessor Records.

If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage may be used to provide habitat impact mitigation for other development projects that impact like ESHA.

C. Habitat Impact Mitigation Fund

Prior to the issuance of the coastal development permit, the applicant the applicant shall submit evidence, for the review and approval of the Executive Director, that compensatory mitigation, in the form of an in-lieu fee, has been paid to the Mountains Recreation and Conservation Authority to mitigate adverse impacts to chaparral habitat ESHA. The fee shall be calculated as follows:

1) *Development Area and on-site road improvement area, Irrigated Fuel Modification Zones, offsite brush clearance area, and offsite road improvement area:*

The in-lieu fee for these areas shall be \$12,000 per acre within the development area and any required irrigated fuel modification zones. The total acreage shall be based on the map delineating these areas required by this condition.

2) *Non-irrigated Fuel Modification Zones*

The in-lieu fee for non-irrigated fuel modification areas shall be \$3,000 per acre. The total acreage shall be based on the map delineating these areas required by this condition.

Prior to the payment of any in-lieu fee to the Mountains Recreation and Conservation Authority, the applicant shall submit, for the review and approval of the Executive Director, the calculation of the in-lieu fee required to mitigate adverse impacts to chaparral habitat ESHA, in accordance with this condition. After review and approval of the fee calculation, the fee shall be paid to the Mountains Recreation and Conservation Authority. The fee shall be used for the acquisition, permanent preservation or restoration of chaparral habitat in the Santa Monica Mountains coastal zone. The fee may not be used to restore areas where development occurred in violation of the Coastal Act's permit requirements.

10. *Removal of Excess Excavated Material*

Prior to the issuance of the coastal development permit, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. If the disposal site is located in the Coastal Zone, the disposal site must have a valid coastal development permit for the disposal of fill material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of the material.

11. *Removal of Natural Vegetation*

Removal of natural vegetation for any purpose, including fuel modification for the development approved pursuant to these permits shall not commence until the local government has issued a building or grading permit(s) for the development approved pursuant to Coastal Development Permit No. 4-05-153.

12. *Oak Tree Monitoring*

The applicants shall retain the services of a biological consultant or arborist with appropriate qualifications acceptable to the Executive Director. The biological consultant or arborist shall be present on site during grading of the access road and construction of access road improvements. The consultant shall immediately notify the Executive Director if unpermitted activities occur or if any oak trees are damaged, removed, or impacted beyond the scope of the work allowed by Coastal Development Permit 4-05-153. This monitor shall have the authority to

require the applicants to cease work should any breach in permit compliance occur, or if any unforeseen sensitive habitat issues arise.

The applicants shall also implement all oak tree preservation measures enumerated in the oak tree report prepared by L. Newman Design Group, dated July 1, 2005. The applicants shall retain a qualified oak tree consultant to monitor the following oak trees, as identified in the oak tree report prepared by L. Newman Design Group for a period of ten (10) years minimum: 1, 4, 5, 10, 11, 14, 17, 18, and 21 (**Exhibit 12**).

An annual monitoring report shall be submitted for the review and approval of the Executive Director for each of the ten years. Should any of these trees be lost or suffer worsened health or vigor as a result of this project, the applicants shall plant replacement trees on the site at a rate of 10:1. If replacement plantings are required, the applicants shall submit, for the review and approval of the Executive Director, an oak tree replacement planting program, prepared by a qualified biologist, arborist, or other qualified resource specialist, which specifies replacement tree locations, planting specifications, and a monitoring program to ensure that the replacement planting program is successful.

13. Open Space Conservation Easement

No development, as defined in Section 30106 of the Coastal Act, grazing, or agricultural activities shall occur outside of the approved development area, within the portion of the property identified as the "open space conservation easement" area, as shown in **Exhibit 15** except for:

Fuel modification required by the Los Angeles County Fire Department undertaken in accordance with the final approved fuel modification plan required by **Special Condition Three (3)** or other fuel modification plans required and approved by the Commission pursuant to a different CDP(s) issued by the Commission; drainage and polluted runoff control activities pursuant to **Special Condition Two (2)** and **Special Condition Three (3)**; construction and maintenance of public trails, if approved by the Commission as an amendment to this coastal development permit or a new coastal development permit; and construction and maintenance of one access road and utilities to serve the adjoining parcel to the west of the subject parcel (APN 4457-005-011), if approved by the Commission in a new coastal development permit.

Prior to issuance of the Coastal Development Permit, the applicant shall execute and record a document in a form and content acceptable to the Executive Director, granting to the Mountains Recreation and Conservation Authority ("MRCA") on behalf of the people of the State of California an open space conservation easement over the "open space conservation easement area" described above, for the purpose of habitat protection. The recorded easement document shall include a formal legal description of the entire property; and a metes and bounds legal description and graphic depiction, prepared by a licensed surveyor, of the open space conservation easement area, as generally shown on **Exhibit 15**. The recorded document shall reflect that no development shall occur within the open space conservation easement area except as otherwise set forth in this permit condition. The grant of easement shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed, and shall run with the land in favor of the MRCA on behalf of the people of the State of California, binding all successors and assigns.

14. Pool and Spa Drainage and Maintenance

By acceptance of this permit, the applicant agrees to install a no chlorine or low chlorine purification system and agrees to maintain proper pool water pH, calcium and alkalinity balance to ensure any runoff or drainage from the pool or spa will not include excessive amounts of chemicals that may adversely affect water quality or environmentally sensitive habitat areas. In addition, the applicant agrees not to discharge chlorinated or non-chlorinated pool water into a street, storm drain, creek, canyon drainage channel, or other location where it could enter receiving waters.

15. Offer to Dedicate Public Trail Easement

Consistent with the applicant's proposal of an offer to dedicate a ten foot (10') wide non-exclusive public trail easement as part of this project, the applicant as landowner agrees to complete the following prior to issuance of the permit: the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director a ten foot (10') wide public access hiking, biking, and equestrian trail easement in the general location and configuration depicted in **Exhibit 4**. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use that may exist on the property. The document shall also provide that there shall be no gate(s) at the entrance to or exit from the easement.

The offer shall provide the public the right to pass and re-pass over the dedicated route. The document shall be recorded free of prior encumbrances except for tax liens, which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees of the applicant or landowner, and shall be irrevocable. The recording document shall include legal descriptions of both the applicant's entire parcel and the trail easement area and a graphic representation prepared by a licensed surveyor showing the area identified in the legal description of the easement area.

16. Revised Plans

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, two sets of revised plans for the proposed road improvements showing that a three to five foot wide portion of the road bed, running the entire length of the proposed road improvements (except where the proposed improvements occupy the entire width of the 40 foot wide easement), will be maintained as unpaved area. If it is necessary to widen the proposed road bed to accomplish this requirement, such widening shall be achieved while maintaining the proposed limits of grading (cut and fill slopes) as shown on the grading plan dated September 20, 2006, by construction of retaining walls no higher than six feet above finished grade, and subject to the structural appearance requirements provided in **Special Condition Five (5)** above. Should a trail easement be dedicated immediately parallel to the segment of Puerco Motorway on which the proposed road improvements are proposed, the applicant may submit an application for a permit amendment to modify or eliminate the above stated requirement.

17. Condition Compliance

Within ninety (90) days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

18. Public Rights

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that may exist on the property or on the existing dirt access road to the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property or on the existing dirt access road to the property.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

The applicant proposes to construct a two-story, 6,221 sq. ft. single family residence, 566 sq. ft. detached three-car garage, two-story, 690 sq. ft. guesthouse, swimming pool, well, water tank, septic system, landscaping (including vegetated screening to the north and west of the proposed residence), driveway, as-built stabilization of an existing oak tree, and approximately 1,590 cu. yds. of grading (1290 cu. yds. cut, 300 cu. yds. fill). The proposed project also includes improvements to an existing approximately 1.36 mile long access road (Puerco Motorway), including paving, widening, construction of retaining walls, drainage improvements, and turnarounds, and approximately 10,050 cu. yds. of grading (8,050 cu. yds. cut, 2,000 cu. yds. fill). The proposed project also includes an offer to dedicate a 10 ft. wide, approximately 1,036 ft. long non-exclusive public trail easement (**Exhibits 4 - 10**).

The project site is a vacant 40-acre parcel located in the Santa Monica Mountains east of Corral Canyon Road. (**Exhibits 1, 2 & 13**). The area surrounding the project site is characterized by expansive undeveloped hillside terrain. The subject parcel is comprised of moderate to steeply sloping hillside terrain, with elevations ranging between 975 and 1500 feet above mean sea level. The proposed building site is located in the southeast corner of the property, adjacent to the dirt access road (Puerco Motorway) and below and to the south of a small knoll on a ridgeline overlooking upper Puerco Canyon and upper Corral Canyon. The parcel is undeveloped with the exception of Puerco Motorway and a cleared area adjacent to the road and building site, both of which existed prior to the January 1, 1977 effectiveness date of the Coastal Act (**Exhibit 11**).

The undeveloped portions of the subject site support an extensive native mixed chaparral community with scattered Coast live oak (*Quercus agrifolia*) woodlands that qualify as environmentally sensitive habitat. Similarly, undisturbed mixed chaparral habitat and oak woodland exists adjacent to the access road. In addition, hillside terrain that extends on all

sides of the subject site contains significant chaparral and oak woodland vegetation creating an extensive area of contiguous habitat (**Exhibit 13**).

The subject site is located within the upper Corral Canyon and upper Puerco Canyon watersheds, and contains several natural drainages and a portion of an unnamed United States Geologic Service (USGS) designated blue line stream. With the exception of the southeast corner containing the proposed building pad and residence, the entire subject property is within a designated Significant Watershed in the certified 1986 Malibu/Santa Monica Mountains Land Use Plan (LUP). In addition, several natural drainages cross the access road. The Commission notes that the location of the proposed residence is the preferred alternative in order to minimize grading and disturbance to sensitive habitat onsite (**Exhibit 2**).

The project site is located in a scenic area, adjacent to public open space and recreation areas and will be visible at a distance from the Backbone Trail and Mesa Peak Motorway, within Malibu Creek State Park. The residence is sited below a prominent knoll, but portions of the residence are located on a ridgeline designated as a significant ridgeline in the Malibu/Santa Monica Mountains LUP. The proposed residence will not be visible from Pacific Coast Highway, which is a designated scenic road in the Malibu/Santa Monica Mountains LUP, but it will be visible from Corral Canyon Road, which is also a designated scenic road. In addition, the proposed road improvements may be visible from Pacific Coast Highway and Corral Canyon Road, as well as from the Corral Canyon Park Trail Loop (**Exhibit 3**).

B. GEOLOGY AND HAZARDS

The proposed development is located in the Santa Monica Mountains area, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains area include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

Section 30253 of the Coastal Act states in pertinent part that new development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

Section 30253 of the Coastal Act mandates that new development be sited and designed to provide geologic stability and structural integrity, and minimize risks to life and property in areas of high geologic, flood, and fire hazard.

The applicant has submitted three geologic reports ("Geologic/Geotechnical Engineering Report, Proposed Single Family Residence," Gold Coast Geoservices, Inc., August 21, 2005; "Response to Environmental Health Division Review Letter for Proposed Septic System for Planned Single Family Residence," Gold Coast Geoservices, Inc., June 15, 2005; "Response to Environmental Health Division Review Letter for Proposed Septic System for Planned Single

Family Residence,” Gold Coast Geoservices, Inc., June 15, 2005; “Percolation Test Results and Septic System Design Report for Proposed Single Family Residence and Guest Suite,” Gold Coast Geoservices, Inc., March 25, 2005) that evaluate the geologic stability of the subject site and the access road area in relation to the proposed development. Based on their evaluation of the site’s geology and the proposed development the consultants have found that the project site, including the access road area, is suitable for the proposed project. Regarding the proposed access road improvements, the project’s geotechnical consultants state in their August 21, 2005 report:

It is the opinion of the undersigned that the proposed grading and construction will be safe against hazard from landslide, settlement, or slippage, and that the proposed construction will have no adverse geologic effect on offsite properties. Assumptions critical to our opinion are that the design recommendations will be properly implemented during the proposed construction, and that the property and adjacent properties will be properly maintained to prevent excessive irrigation, blocked drainage devices, or other adverse conditions.

The geotechnical engineering consultants conclude that the proposed development is feasible and will be free from geologic hazard provided their recommendations are incorporated into the proposed development. The submitted geologic reports contain several recommendations to be incorporated into project construction, foundations, grading, site design, retaining walls, sewage disposal, erosion control, and drainage, to ensure the stability and geologic safety of the proposed project site and adjacent property. To ensure that the recommendations of the consultants have been incorporated into all proposed development the Commission, as specified in **Special Condition One (1)**, requires the applicant to comply with and incorporate the recommendations contained in the submitted geologic reports into all final design and construction, and to obtain the approval of the geotechnical consultants prior to commencement of construction. Final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed development, as approved by the Commission, which may be recommended by the consultant shall require an amendment to the permit or a new coastal development permit.

The Commission finds that controlling and diverting run-off in a non-erosive manner from the proposed structures, impervious surfaces, and building pad will also add to the geologic stability of the project site and adjacent properties. Therefore, in order to minimize erosion and ensure stability of the project site, and to ensure that adequate drainage and erosion control is included in the proposed development, the Commission requires the applicants to submit drainage and erosion control plans certified by the geotechnical engineer, as specified in **Special Conditions Two (2)** and **Three (3)**.

Further, the Commission finds that landscaping of graded and disturbed areas on the subject site and adjacent to the road will serve to stabilize disturbed soils, reduce erosion and thus enhance and maintain the geologic stability of the site. Therefore, **Special Condition Three (3)** requires the applicant to submit landscaping plans certified by the consulting geotechnical engineer as in conformance with their recommendations for landscaping of the project site and areas disturbed by access road improvements. **Special Condition Three (3)** also requires the applicant to utilize and maintain native and noninvasive plant species compatible with the surrounding area for landscaping the project site.

Invasive and non-native plant species are generally characterized as having a shallow root structure in comparison with their high surface/foilage weight. The Commission notes that non-

native and invasive plant species with high surface/foliage weight and shallow root structures do not serve to stabilize slopes and that such vegetation results in potential adverse effects to the stability of the project site. Native species, alternatively, tend to have a deeper root structure than non-native and invasive species, and once established aid in preventing erosion. Therefore, the Commission finds that in order to ensure site stability, all slopes and disturbed and graded areas shall be landscaped with appropriate native plant species, as specified in **Special Condition Three (3)**.

In addition, to ensure that excess excavated material is moved off site so as not to contribute to unnecessary landform alteration and to minimize erosion and sedimentation from stockpiled excavated soil, the Commission finds it necessary to require the applicant to dispose of the material at a appropriate disposal site or to a site that has been approved to accept fill material, as specified in **Special Condition Ten (10)**.

Furthermore, in order to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading, access road improvements, or construction of the proposed structures, the Commission finds that it is necessary to impose a restriction on the removal of natural vegetation as specified in **Special Condition Eleven (11)**. This restriction specifies that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced. The limitation imposed by **Special Condition Eleven (11)** avoids loss of natural vegetative coverage resulting in unnecessary erosion in the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans.

Additionally, the proposed project is located in the Santa Monica Mountains, an area subject to an extraordinary potential for damage or destruction from wild fire. Typical vegetation in the Santa Monica Mountains consists mostly of coastal sage scrub and chaparral. Many plant species common to these communities produce and store terpenes, which are highly flammable substances (Mooney in Barbour, *Terrestrial Vegetation of California*, 1988). Chaparral and sage scrub communities have evolved in concert with, and continue to produce the potential for, frequent wild fires. The typical warm, dry summer conditions of the Mediterranean climate combine with the natural characteristics of the native vegetation to pose a risk of wild fire damage to development that cannot be completely avoided or mitigated.

Further, the geotechnical report dated August 21, 2005 shows the area of the proposed access road improvements is adjacent to several mapped landslide features, as shown on Figure 2 – Geologic Site Location Map and Figure 3 – Geologic Site Location Map, included in the August 21, 2005 report. Based on the field analysis and examination of aerial photographs, the report states that no indications of active or historically active landslides were found within or adjacent to the mapped landslide areas. The report goes on to say that the mapped landslide areas are adequately removed from the proposed development, and that no impact to the mapped landslide areas will result from the proposed construction.

However, the Commission notes that because there remains some inherent risk in building within or adjacent to potential landslides, and due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from the associated risks as required by **Special Condition Four (4)**. The assumption of risk will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same.

Finally, **Special Condition Eight (8)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

For the reasons set forth above, the Commission finds that, as conditioned, the proposed project is consistent with §30253 of the Coastal Act.

C. WATER QUALITY

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, and introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, minimizing alteration of natural streams.

The subject property is located within the upper Corral Canyon and upper Puerco Canyon watersheds, and contains several natural drainages and a portion of an unnamed United States Geologic Service (USGS) designated blue line stream. In addition, several natural drainages cross the access road. The applicant is proposing to construct numerous drainage structures to capture, channel, and redirect flows from these drainages.

The proposed development will result in an increase in impervious surfaces, which in turn decreases the infiltrative function and capacity of existing permeable land on site. The reduction in permeable space therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site of the proposed residence and the access road. Further, pollutants commonly found in runoff associated with roads and residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity

and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water and marine resource policies of the Coastal Act, the Commission finds it necessary to require the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs to accommodate (infiltrate, filter or treat) the runoff from the more frequent storms, rather than for the largest infrequent storms, results in improved BMP performance

The American Society of Civil Engineers (ASCE) and the Water Environment Federation (WEF) have recommended a numerical BMP design standard for storm water that is derived from a mathematical equation to maximize treatment of runoff volume for water quality based on rainfall/runoff statistics and which is economically sound.¹ The maximized treatment volume is cut-off at the point of diminishing returns for rainfall/runoff frequency. On the basis of this formula and rainfall/runoff statistics, the point of diminishing returns for treatment control is the 85th percentile storm event. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in **Special Condition Two (2)**, and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

Furthermore, interim erosion control measures implemented during construction and post construction landscaping will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. Therefore, the Commission finds that **Special Condition Three (3)** is necessary to ensure the proposed development will not adversely impact water quality or coastal resources.

Finally, the proposed development includes the installation of an on-site private sewage disposal system to serve the residence. The applicant's geotechnical consultants performed infiltration tests. The County of Los Angeles Environmental Health Department has given in-concept approval of the proposed septic system, determining that the system meets the requirements of the plumbing code. The Commission has found that conformance with the provisions of the plumbing code is protective of resources. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30231 of the Coastal Act.

D. SENSITIVE RESOURCES

Section **30230** of the Coastal Act states that:

¹ *Urban Runoff Quality Management, WEF Manual of Practice No. 23, ASCE manual and Report on Engineering Practice No. 87.* WEF, Alexandria, VA; ASCE, Reston, VA. 259 pp (1998); Urbonas, Guo, and Tucker, "Optimization of Stormwater Quality Capture Volume," in *Urban Stormwater Quality Enhancement - Source Control, Retrofitting, and Combined Sewere Technology, Proceedings of an Engineering Foundation Conference*, Harry C. Torno, ed. October 1989. New York: ASCE, pp. 94-110.

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240 states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.***
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.***

Section 30107.5 of the Coastal Act, defines an environmentally sensitive area as:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through, among other means, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. In addition, Sections 30107.5 and 30240 of the Coastal Act state that environmentally sensitive habitat areas must be protected against disruption of habitat values. Therefore, when considering any area, such as the Santa Monica Mountains, with regard to an ESHA determination one must focus on three main questions:

- 1) Is a habitat or species rare or especially valuable?
- 2) Does the habitat or species have a special nature or role in the ecosystem?
- 3) Is the habitat or species easily disturbed or degraded by human activities and developments?

The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is itself rare, and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Therefore, habitat areas that provide important roles in that

ecosystem are especially valuable and meet the second criterion for the ESHA designation. In the Santa Monica Mountains, coastal sage scrub and chaparral have many important roles in the ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. For these and other reasons discussed in **Exhibit 14**, which is incorporated herein, the Commission finds that large contiguous, relatively pristine stands of coastal sage scrub and chaparral in the Santa Monica Mountains meet the definition of ESHA. This is consistent with the Commission's past findings on the Malibu LCP².

Further, woodlands that are native to the Santa Monica Mountains, such as oak woodlands, are important coastal resources. Native trees prevent the erosion of hillsides and stream banks, moderate water temperatures in streams through shading, provide food and habitat, including nesting, roosting, and burrowing to a wide variety of wildlife species, contribute nutrients to watersheds, and are important scenic elements in the landscape. In the Santa Monica Mountains, coast live oak woodland occurs mostly on north slopes, shaded ravines and canyon bottoms. Besides the coast live oak, this plant community includes hollyleaf cherry, California bay laurel, coffeeberry, and poison oak. Coast live oak woodland is more tolerant of salt-laden fog than other oaks and is generally found nearer the coast³. Coast live oak also occurs as a riparian corridor species within the Santa Monica Mountains. Valley oaks are endemic to California and reach their southern most extent in the Santa Monica Mountains. Valley oaks were once widely distributed throughout California's perennial grasslands in central and coastal valleys. Individuals of this species may survive 400-600 years. Over the past 150 years, valley oak savanna habitat has been drastically reduced and altered due to agricultural and residential development. The understory is now dominated by annual grasses and recruitment of seedlings is generally poor. This is a very threatened habitat. The important ecosystem functions of oak woodlands and savanna are widely recognized⁴. These habitats support a high diversity of birds⁵, and provide refuge for many species of sensitive bats⁶. Typical wildlife in this habitat includes acorn woodpeckers, scrub jays, plain titmice, northern flickers, cooper's hawks, western screech owls, mule deer, gray foxes, ground squirrels, jackrabbits and several species of sensitive bats. Therefore, because of their important ecosystem functions and vulnerability to development, the Commission finds that oak woodlands and savanna within the Santa Monica Mountains meet the definition of ESHA under the Coastal Act.

The subject parcel is undisturbed, with the exception of the portion of the dirt access road that crosses the property, and approximately 50% of the proposed building site, which was previously denuded of ESHA prior to the effectiveness date of the Coastal Act and has not

² Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

³ NPS 2000. op. cit.

⁴ Block, W.M., M.L. Morrison, and J. Verner. 1990. Wildlife and oak-woodland interdependency. *Fremontia* 18(3):72-76. Pavlik, B.M., P.C. Muick, S. Johnson, and M. Popper. 1991. *Oaks of California*. Cachuma Press and California Oak Foundation, Los Olivos, California. 184 pp.

⁵ Cody, M.L. 1977. Birds. Pp. 223-231 in Throver, N.J.W., and D.E. Bradbury (eds.). *Chile-California Mediterranean scrub atlas*. US/IBP Synthesis Series 2. Dowden, Hutchinson & Ross, Stroudsburg, Pennsylvania. National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701

⁶ Miner, K.L., and D.C. Stokes. 2000. Status, conservation issues, and research needs for bats in the south coast bioregion. Paper presented at *Planning for biodiversity: bringing research and management together*, February 29, California State University, Pomona, California.

recovered. The undeveloped portions of the subject site support extensive native chaparral and oak woodland plant communities that qualify as environmentally sensitive habitat. The submitted biological study prepared by Steven G. Nelson, biological consultant, in November 2005 indicates that undisturbed mixed chaparral habitat occurs over most of the site, with scattered groups of Coast live oak trees. Similarly, undisturbed mixed chaparral habitat, with scattered oak woodlands, occurs adjacent to the access road. In addition, hillside terrain that extends on all sides of the subject site contains significant chaparral vegetation with intermittent oak woodlands creating an extensive area of contiguous habitat.

Therefore, due to the important ecosystem roles of oak woodland and chaparral in the Santa Monica Mountains (detailed in **Exhibit 14**), and the fact that the subject site is relatively undisturbed and part of a large, unfragmented block of habitat, the Commission finds that the chaparral and oak woodland habitat on and surrounding the subject site (excluding the existing access road) meets the definition of ESHA under the Coastal Act.

As explained above, the project site and the surrounding area (excluding the access road and cleared area that were graded prior to the effective date of the Coastal Act) constitute an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5. Section 30240 requires that "environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." Section 30240 restricts development to only those uses that are dependent on the resource. The applicant proposes to construct a single-family residence on the subject parcel, and to improve an approximately 1.36 long access road. The proposed residence is located on a site that minimizes grading and removal of habitat. However, the construction of the residence in that location will still require the removal of chaparral ESHA both on the proposed building site and as a result of fuel modification for fire protection purposes. Similarly, construction of improvements to the existing access road will require the removal of chaparral ESHA and disturbance of oak woodlands. As single-family residences and roads do not have to be located within ESHAs to function, the Commission does not consider these to be uses dependent on ESHA resources. Application of Section 30240, by itself, would require denial of the project, because the project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources.

However, the Commission must also consider Section 30010, and the Supreme Court decision in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S.Ct. 2886. Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner which will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what government action results in a "taking" was addressed by the U.S. Supreme Court in *Lucas v. South Carolina Coastal Council*. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law. Another factor that should be considered is the extent to which a project denial would interfere with reasonable investment-backed expectations.

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant's property of all reasonable

economic use, the Commission may be required to allow some development even where a Coastal Act policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, Section 30240 of the Coastal Act cannot be read to deny all economically beneficial or productive use of land because Section 30240 cannot be interpreted to require the Commission to act in an unconstitutional manner.

In the subject case, the applicant purchased the property in December of 2001 for approximately \$600,000. The parcel was designated in the County's certified Land Use Plan in 1986 for residential use (Mountain Land II, which allows "very low intensity" residential development at a maximum density of 1 dwelling unit per 20 acres). At the time the applicant purchased the parcel, the County's certified Land Use Plan designated the majority of the parcel as part of a Significant Watershed – Residential and Resource Dependent Use, which allowed residential use in accordance with specific standards (the area surrounding the onsite blue-line stream was designated Inland ESHA). Based on this fact, the applicant had reason to believe that they had purchased a parcel on which they would be able to build a residence.

The Commission finds that in this particular case, other allowable uses for the subject site, such as a recreational park or a nature preserve, are feasible and may provide the owner an economic return on the investment. The parcel is 40 acres and is located in a mountainous undeveloped area south of Malibu Creek State Park and is over 3/4 mile distant from the nearest single-family residence. Public parkland and open space has been acquired in the vicinity and the proposed project site is located within a Proposed State Acquisition Area. However, there is currently not an offer to purchase the property from any public park agency. The Commission thus concludes that in this particular case there is no currently available alternative use for the site other than residential development. The Commission finds, therefore, that, given the absence of an offer to purchase the property for public parkland, outright denial of all residential use would interfere with reasonable investment-backed expectations and deprive the property of all reasonable economic use.

Next the Commission turns to the question of nuisance. There is no evidence that construction of a residence would create a nuisance under California law. Other houses have been constructed in similar situations in chaparral habitat in Los Angeles County, apparently without the creation of nuisances. The County's Health Department has not reported evidence of septic system failures. In addition, the County has reviewed and approved the applicant's proposed septic system, ensuring that the system will not create public health problems. Furthermore, the use that is proposed is residential, rather than, for example, industrial, which might create noise or odors or otherwise create a public nuisance. In conclusion, the Commission finds that a residential project can be allowed to permit the applicant a reasonable economic use of their property consistent with Section 30010 of the Coastal Act.

While the applicant is entitled under Section 30010 to an assurance that the Commission will not act in such a way as to take their property, this section does not authorize the Commission to avoid application of the policies of the Coastal Act, including Section 30240, altogether. Instead, the Commission is only directed to avoid construing these policies in a way that would take property. Aside from this instruction, the Commission is still otherwise directed to enforce the requirements of the Act. Therefore, in this situation, the Commission must still comply with Section 30240 by avoiding impacts that would disrupt and/or degrade environmentally sensitive habitat, to the extent this can be done without taking the property.

1. Oak Woodland ESHA

According to Oaks of California, "Coast live oak is unique among the California oaks in its ability to thrive along the coast...Proximity to the ocean provides a milder climate for coast live oak, with warmer winters (seldom encountering frost or snow) and less sweltering summers than found inland. Fog is common, providing additional relief from heat and drought...Inland, it can be found at elevations up to 5,000 feet with groves that spread across valleys, on steep hillsides, in rocky canyons, and along streams and intermittent watercourses" (Pavlik, Muick, Johnson, and Popper, 1991).

The coast live oak is a large, evergreen tree with a dense, round crown and large limbs. Its trunk divides into either erect limbs or, more commonly, into crooked, wide-spreading limbs that sometimes touch or trail the ground. They can grow to 30 to 70 feet high and 35 to 80 feet wide.

Oaks are easily damaged and are very sensitive to disturbances that occur to the tree or the surrounding environment. Their root system is extensive, but surprisingly shallow, radiating out as much as 50 feet beyond the spread of the tree leaves, or canopy. The ground area at the outside edge of the canopy, referred to as the dripline, is especially important: the tree obtains most of its surface water and nutrients here, as well as conducts an important exchange of air and other gases (Los Angeles County Regional Planning Oak Tree Ordinance).

In past permit actions, the Commission has recognized the importance of the habitat area provided by oak woodlands or savannas. Oak woodlands, and often-associated riparian areas have been identified as extremely important to the fish and wildlife resources of California. They are recognized for supporting a wide variety of wildlife species by providing food, nesting, and roosting cover, and in many instances, important understory vegetation. In addition, hardwoods benefit fishery resources by preventing the erosion of hillsides and stream banks, moderating water temperatures by shading, and contributing nutrients and food-chain organisms to waterways (California Department of Fish and Game, Hardwood Policies, 1985).

There are potential significant adverse impacts to individual oak trees from various aspects of the proposed project. Encroachments into the protected zone of an oak tree, particularly of the nature proposed for several of the trees on the project site, can result in significant adverse impacts. An article entitled "Oak Trees: Care and Maintenance" prepared by the Forestry Department of the County of Los Angeles states:

Any change in the level of soil around an oak tree can have a negative impact. The most critical area lies within 6' to 10' of the trunk: no soil should be added or scraped away. ... Construction activities outside the protected zone can have damaging impacts on existing trees. ... Digging of trenches in the root zone should be avoided. Roots may be cut or severely damaged, and the tree can be killed. ... Any roots exposed during this work should be covered with wet burlap and kept moist until the soil can be replaced. The roots depend on an important exchange of both water and air through the soil within the protected zone. Any kind of activity which compacts the soil in this area blocks this exchange and can have serious long term negative effects on the trees.

This publication also notes specific considerations for watering supplements underneath and near oak trees, and states that:

Improper watering is often overlooked as the cause of tree death because it can take years for the damage to show. Once the tree shows obvious signs of decline, it is often too late to correct the problem...Overwatering, especially during the summer

months, causes a number of problems which can lead to decline and eventual death of the tree. It creates ideal conditions for attacks of Oak Root Fungus by allowing the fungus to breed all year. In addition, both evergreen and deciduous oaks grow vigorously in the spring and naturally go dormant in the summer. Extra water only encourages new tip growth which is subject to mildew. Oaks need this period of rest.

The site of the proposed residence is accessed by an existing approximately 1.36 mile dirt road that passes by several oak trees. The applicant is proposing improvements to this road in order to comply with the access requirements of the Los Angeles County Fire Department for new development. These improvements include paving, widening, construction of retaining walls, drainage improvements, and turnarounds, and approximately 10,050 cu. yds. of grading (8,050 cu. yds. cut, 2,000 cu. yds. fill). The proposed road improvements encroach within the approximate protected zones of four oak trees (identified on the project oak tree plans as Oak Tree Nos. 1, 10, 11, and 14), and within five feet of the approximate protected zones of five other oak trees (identified on the project oak tree plans as Oak Tree Nos. 4, 5, 17, 18, and 21) **(Exhibit 12)**.

The applicant proposes to surface the roadway under the protected zones of Oak Tree Nos. 1, 10, 11, and 14 with a permeable material (such as "Gravelpave 2") and to avoid grading, sub-base preparation and disturbance of soil in these areas. Gravelpave reduces compaction and allows infiltration of water and air into the soil, thus reducing impacts to the root zones of the trees. However, the proposed paving of adjacent sections of road will alter drainage and infiltration patterns in the area of the oak trees, and the proposed improvements will allow increased use of the road, thus increasing the potential for impacts associated with vehicle use. Moreover, given the approximate nature of the mapped protected zones of the oak trees, construction adjacent to the protected zones could impact Oak Tree Nos. 1, 10, 11, and 14, as well as the five other oak trees (Oak Tree Nos. 4, 5, 17, 18, and 21) whose approximate protected zones are located within five feet of project activities, including grading, paving, and construction of retaining walls and drainage devices.

Given the location of the oak trees and the route of the road, there are no design alternatives that can be employed to further avoid or reduce impacts to the trees. In order to minimize such impacts and to provide mitigation should any trees be lost or experience diminished health, **Special Condition No. 12** requires the applicant to provide monitoring of oak trees on the site where development will encroach within five feet of their approximate protected zones, including Oak Tree Nos. 1, 4, 5, 10, 11, 14, 17, 18, and 21, for a period of no less than 10 years. If the monitoring reveals that any of these nine trees die or suffer reduced health or vigor, replacement trees must be provided as mitigation.

In addition, the applicant's proposal includes an offer-to-dedicate a 10 foot wide, approximately 1,036 foot long public trail easement across the subject property. The proposed trail easement runs between several oak trees, although it appears to be located outside of their protected zones. The impacts, if any, of a future trail in this location will be addressed once an application is submitted for construction of the trail.

2. Chaparral ESHA and Fuel Modification

As discussed above, the proposed development will be approved within ESHA in order to provide an economically viable use. Siting and design alternatives have been considered in

order to identify the alternative that can avoid and minimize impacts to ESHA to the maximum extent feasible. In this case, the project has been designed to place all structures on the southeasternmost portion of the property adjacent to an existing access road. Any alternative location on the site would likely include the removal of more native vegetation in order to extend the access road to the site. Not including the area of the access road, driveway, and turnaround, the proposed development area is approximately 9,541 sq. ft. The proposed building pad of approximately 9,541 sq. ft. conforms to the maximum development area of 10,000 sq. ft. that the Commission has typically allowed in similar situations on sites containing ESHA.

The applicant also proposes improvements to an existing access road, including paving, widening, construction of retaining walls, drainage improvements, and turnarounds, approximately 10,050 cu. yds. of grading (8,050 cu. yds. cut, 2,000 cu. yds. fill). Widening and improvement of the access road is necessary in order to meet Los Angeles County Fire Department requirements for access to the proposed single family residence. The access road passes through chaparral and oak woodland ESHA. Review of historical aerial photographs of the site by staff has confirmed that the dirt access road was present in 1958, prior to 1977 and the effective date of the Coastal Act. No alternative access route to the property exists. Construction of an alternate access route, if feasible, would entail increased impacts to ESHA.

Given the location of ESHA on the site, there will be significant impacts to ESHA resulting from construction of the road improvements and the implementation of the required fuel modification plan around the proposed single family residence. The following discussion of ESHA impacts from new development and fuel modification is based on the findings of the Malibu LCP⁷.

Fuel modification is the removal or modification of combustible native or ornamental vegetation. It may include replacement with drought tolerant, fire resistant plants. The amount and location of required fuel modification would vary according to the fire history of the area, the amount and type of plant species on the site, topography, weather patterns, construction design, and siting of structures. There are typically three fuel modification zones applied by the Fire Department:

Zone A (Setback Zone) is required to be a minimum of 20 feet beyond the edge of protected structures. In this area native vegetation is cleared and only ground cover, green lawn, and a limited number of ornamental plant species are allowed. This zone must be irrigated to maintain a high moisture content.

Zone B (Irrigated Zone) is required to extend from the outermost edge of Zone A to a maximum of 80 feet. In this area ground covers may not extend over 18 inches in height. Some native vegetation may remain in this zone if they are adequately spaced, maintained free of dead wood and individual plants are thinned. This zone must be irrigated to maintain a high moisture content.

Zone C (Thinning Zone) is required to extend from the outermost edge of Zone B up to 100 feet. This zone would primarily retain existing native vegetation, with the exception of high fuel species such as chamise, red shank, California sagebrush, common buckwheat and sage. Dead or dying vegetation must be removed and the fuel in existing vegetation reduced by thinning individual plants.

⁷ Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

Thus, the combined required fuel modification area around structures can extend up to a maximum of 200 feet. If there is not adequate area on the project site to provide the required fuel modification for structures, then brush clearance may also be required on adjacent parcels.

Notwithstanding the need to protect structures from the risk of wildfire, fuel modification results in significant adverse impacts that are in excess of those directly related to the development itself. Within the area next to approved structures (Zone A), all native vegetation must be removed and ornamental, low-fuel plants substituted. In Zone B, most native vegetation will be removed or widely spaced. Finally, in Zone C, native vegetation may be retained if thinned, although particular high-fuel plant species must be removed (Several of the high fuel species are important components of the coastal sage scrub community). In this way, for a large area around any permitted structures, native vegetation will be cleared, selectively removed to provide wider spacing, and thinned.

Obviously, native vegetation that is cleared and replaced with ornamental species, or substantially removed and widely spaced will be lost as habitat and watershed cover. Additionally, thinned areas will be greatly reduced in habitat value. Even where complete clearance of vegetation is not required, the natural habitat can be significantly impacted, and ultimately lost. For instance, in coastal sage scrub and chaparral habitat, the natural soil coverage of the canopies of individual plants provides shading and reduced soil temperatures. When these plants are thinned, the microclimate of the area will be affected, increasing soil temperatures, which can lead to loss of individual plants and the eventual conversion of the area to a dominance of different non-native plant species. The areas created by thinning between shrubs can be invaded by non-native grasses that will over time out-compete native species.

For example, undisturbed coastal sage scrub and chaparral vegetation typical of coastal canyon slopes, and the downslope riparian corridors of the canyon bottoms, ordinarily contains a variety of tree and shrub species with established root systems. Depending on the canopy coverage, these species may be accompanied by understory species of lower profile. The established vegetative cover, including the leaf detritus and other mulch contributed by the native plants, slows rainfall runoff from canyon slopes and staunches silt flows that result from ordinary erosional processes. The native vegetation thereby limits the intrusion of sediments into downslope creeks. Accordingly, disturbed slopes where vegetation is either cleared or thinned are more directly exposed to rainfall runoff that can therefore wash canyon soils into down-gradient creeks. The resultant erosion reduces topsoil and steepens slopes, making revegetation increasingly difficult or creating ideal conditions for colonization by invasive, non-native species that supplant the native populations.

The cumulative loss of habitat cover also reduces the value of the sensitive resource areas as a refuge for birds and animals, for example by making them—or their nests and burrows—more readily apparent to predators. The impacts of fuel clearance on bird communities was studied by Stralberg who identified three ecological categories of birds in the Santa Monica Mountains: 1) local and long distance migrators (ash-throated flycatcher, Pacific-slope flycatcher, phainopepla, black-headed grosbeak), 2) chaparral-associated species (Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, California towhee) and 3) urban-associated species (mourning dove, American crow,

Western scrub-jay, Northern mockingbird)⁸. It was found in this study that the number of migrators and chaparral-associated species decreased due to habitat fragmentation while the abundance of urban-associated species increased. The impact of fuel clearance is to greatly increase this edge-effect of fragmentation by expanding the amount of cleared area and “edge” many-fold. Similar results of decreases in fragmentation-sensitive bird species are reported from the work of Bolger et al. in southern California chaparral⁹.

Fuel clearance and habitat modification may also disrupt native arthropod communities, and this can have surprising effects far beyond the cleared area on species seemingly unrelated to the direct impacts. A particularly interesting and well-documented example with ants and lizards illustrates this point. When non-native landscaping with intensive irrigation is introduced, the area becomes favorable for the invasive and non-native Argentine ant. This ant forms “super colonies” that can forage more than 650 feet out into the surrounding native chaparral or coastal sage scrub around the landscaped area¹⁰. The Argentine ant competes with native harvester ants and carpenter ants displacing them from the habitat¹¹. These native ants are the primary food resource for the native coast horned lizard, a California “Species of Special Concern.” As a result of Argentine ant invasion, the coast horned lizard and its native ant food resources are diminished in areas near landscaped and irrigated developments¹². In addition to specific effects on the coast horned lizard, there are other Mediterranean habitat ecosystem processes that are impacted by Argentine ant invasion through impacts on long-evolved native ant-plant mutualisms¹³. The composition of the whole arthropod community changes and biodiversity decreases when habitats are subjected to fuel modification. In coastal sage scrub disturbed by fuel modification, fewer arthropod predator species are seen and more exotic arthropod species are present than in undisturbed habitats¹⁴.

Studies in the Mediterranean vegetation of South Africa (equivalent to California shrubland with similar plant species) have shown how the invasive Argentine ant can disrupt the whole ecosystem.¹⁵ In South Africa the Argentine ant displaces native ants as they do in California. Because the native ants are no longer present to collect and bury seeds, the seeds of the native plants are exposed to predation, and consumed by seed eating insects, birds and mammals. When this habitat burns after Argentine ant invasion the large-seeded plants that were protected by the native ants all but disappear. So the invasion of a non-native ant species drives out native ants, and this can cause a dramatic change in the species composition of the

⁸ Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: a Santa Monica Mountains case study. Pp. 125–136 in Keeley, J.E., M. Baer-Keeley, and C.J. Fotheringham (eds.). *2nd interface between ecology and land development in California*. U.S. Geological Survey, Sacramento, California.

⁹ Bolger, D. T., T. A. Scott and J. T. Rotenberry. 1997. Breeding bird abundance in an urbanizing landscape in coastal Southern California. *Conserv. Biol.* 11:406-421.

¹⁰ Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. *Ecology* 79(6):2041-2056.

¹¹ Holway, D.A. 1995. The distribution of the Argentine ant (*Linepithema humile*) in central California: a twenty-year record of invasion. *Conservation Biology* 9:1634-1637. Human, K.G. and D.M. Gordon. 1996. Exploitation and interference competition between the invasive Argentine ant, (*Linepithema humile*), and native ant species. *Oecologia* 105:405-412.

¹² Fisher, R.N., A.V. Suarez and T.J. Case. 2002. Spatial patterns in the abundance of the coastal horned lizard. *Conservation Biology* 16(1):205-215. Suarez, A.V. J.Q. Richmond and T.J. Case. 2000. Prey selection in horned lizards following the invasion of Argentine ants in southern California. *Ecological Applications* 10(3):711-725.

¹³ Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. *Ecology* 79(6):2041-2056. Bond, W. and P. Slingsby. Collapse of an Ant-Plant Mutualism: The Argentine Ant (*Iridomyrmex humilis*) and Myrmecochorous Proteaceae. *Ecology* 65(4):1031-1037.

¹⁴ Longcore, T.R. 1999. Terrestrial arthropods as indicators of restoration success in coastal sage scrub. Ph.D. Dissertation, University of California, Los Angeles.

¹⁵ Christian, C. 2001. Consequences of a biological invasion reveal the importance of mutualism for plant communities. *Nature* 413:635-639.

plant community by disrupting long-established seed dispersal mutualisms. In California, some insect eggs are adapted to being buried by native ants in a manner similar to plant seeds¹⁶.

The cumulative impacts of development on legal lots containing ESHA in the Santa Monica Mountains, including the required fuel modification and/or brushing is substantial. As discussed above, these impacts can be reduced by considering project alternatives and mitigation measures, but they cannot be completely avoided. The proposed project would be sited to minimize the amount of required fuel modification by clustering development within a 9,541 sq. ft. area. However, the Commission can only find that this project alternative avoids and minimizes ESHA impacts to the maximum extent feasible if the remaining ESHA on the site is preserved to the extent possible. As such, this project alternative, as a whole, will minimize impacts to ESHA to the maximum extent feasible if the remaining ESHA is protected. The most effective way to protect the remaining ESHA on the site is through an open space conservation easement held by the Mountains Recreation and Conservation Authority that prohibits development on the remainder of the site now and in the future.

Under the terms of this condition [**Special Condition Thirteen (13)**], an open space and conservation easement over the open space area (shown in **Exhibit 15**) will be granted by the applicant to the Mountains Recreation and Conservation Authority, a joint powers authority. The MRCA is a partnership between the Santa Monica Mountains Conservancy, the Conejo Recreation and Park District, and the Rancho Simi Recreation and Park District. The MRCA is dedicated to the preservation and management of open space, parkland, watershed lands, trails, and wildlife habitat. The MRCA manages and provides ranger services for almost 50,000 acres of public lands and parks that it owns or are owned by the Santa Monica Mountains Conservancy. The governing board of the Mountains Recreation and Conservation Authority (MRCA) has agreed to accept all open space easements required by the Commission for properties within the Santa Monica Mountains National Recreation Area.

The Commission finds that the intention of requiring the easement to be granted to the MRCA is to have a public agency that has park rangers and other staff active in the Santa Monica Mountains area monitor open space areas to ensure that the restrictions are followed. The MRCA acquires and manages properties for recreation and conservation purposes in the Santa Monica Mountains. MRCA staff and park rangers routinely monitor properties under MRCA management in the Santa Monica Mountains and enforce State law and local ordinances. Therefore, the MRCA is better able to monitor open space and conservation easements than Commission staff. As such, the Commission finds that the requirement of a grant of an open space and conservation easement is the most effective method of ensuring that the open space area on the project site will be conserved in the future. Further, the easement will be recorded against the title of the property and thus provide notice to future owners of the limitations that apply to the open space conservation area. The terms of the easement do not provide for use of the open space conservation area on the site by the public or any other individual or group for any purpose.

As detailed in **Special Condition Thirteen (13)**, the Open Space Conservation Easement will prohibit all development, with the exception of fuel modification and drainage control activities carried out in accordance with **Special Condition Two (2)** and **Special Condition Three (3)**. **Special Condition Thirteen (13)** also allows planting of native vegetation and other restoration activities, and construction and maintenance of public hiking trails, if approved by the

¹⁶ Hughes, L. and M. Westoby. 1992. Capitula on stick insect eggs and elaiosomes on seeds: convergent adaptations for burial by ants. *Functional Ecology* 6:642-648.

Commission as an amendment to this coastal development permit, or as a new coastal development permit. **Special Condition Thirteen (13)** also makes an exception for construction and maintenance of one access road and utilities to serve the adjoining parcel to the west of the subject parcel (APN 4457-005-011), if approved by the Commission in a new coastal development permit.

As described above, the proposed project will be sited to minimize the amount of required fuel modification by clustering development within a 9,541 sq. ft. area, and development has been restricted on the remainder of the property. However, while direct impacts to ESHA through the removal of vegetation would be avoided on the site outside of the development and fuel modification areas, through the open space and conservation easement, indirect impacts to habitat within the open space conservation area will still result from the presence of the proposed development and human activities taking place on the site. The placement of development within an ESHA area will result in habitat fragmentation. Wildlife either living on the site or migrating across the property will undoubtedly avoid areas with noise, lighting or other human activity. As described above and in **Exhibit 14**, fuel modification activities result in conversion of habitat and impacts to insects, birds, and other organisms even outside of the fuel modification area. Further, even though no other development will be permitted within the open space conservation area, there will be a net loss of ESHA area on the project site. The Commission finds that there are feasible mitigation measures available that would compensate for the loss of chaparral ESHA resulting from the removal, conversion, or modification of natural habitat for new development including the development area, fuel modification and brush clearance. The acreage of habitat that is impacted must be determined based on the size of the required fuel modification zone.

In this case, the applicants' approved fuel modification plan (approved by the Los Angeles County Fire Department) shows the use of the standard three zones of vegetation modification. Zone "A" (setback zone) and reduced Zone "B" (irrigation zone) are shown in a radius extending approximately 50 feet from the proposed structures. A "C" Zone (thinning zone) is provided for a distance of 100 feet beyond the "A" and "B" zones. In addition, brush clearance will be required along the new footprint of the proposed improved access road. According to the Fuel Modification Unit of the Los Angeles County Fire Department, brush clearance requirements for private roads generally entail a ten-foot wide clearance zone immediately parallel to and on either side of the road. For mid-slope roads that are adjacent to unusually dense vegetation, brush clearance requirements can be increased to 20 feet on the downslope side of the road. A substantial portion of the subject road traverses the middle of a slope that is adjacent to a dense shrub canopy composed of flammable chaparral species. Therefore it is reasonable to assume that increased brush clearance requirements will apply to this portion of the access road.

The ESHA area affected by the proposed development does not include the existing access road footprint and the portions of the proposed building site identified as "barren" or "ruderal" by the applicant's biologist (**Exhibit 11**) since these areas were previously denuded of ESHA prior to the effectiveness date of the Coastal Act and have not recovered. As such, the ESHA areas that will be impacted by the proposed project are the proposed building site (with the exception of the areas identified as "barren" or "ruderal" by the applicant's biologist in **Exhibit 11**), the required fuel modification and brush clearance areas on the slopes beyond the proposed building site, the proposed area of access road improvements (outside of the existing road footprint as defined above), and the required brush clearance area for the improved access road. The precise area of ESHA that will be impacted by the proposed development has not been calculated. Therefore, the Commission finds that it is necessary to require the applicant to delineate the ESHA both on and offsite that will be impacted by the proposed development

including the areas affected by fuel modification and brushing activities and the proposed access road improvements, as required by **Special Condition Nine (9)**. It is important to note that areas that have been disturbed after the effectiveness date of the Coastal Act without benefit of a coastal development permit shall be evaluated based on the condition of habitat as of the effectiveness date of the Coastal Act.

The Commission has identified three methods for providing mitigation for the unavoidable loss of ESHA resulting from development, including habitat restoration, habitat conservation, and an in-lieu fee for habitat conservation. The Commission finds that these measures are appropriate in this case to mitigate the loss of chaparral habitat on and offsite. These three mitigation methods are provided as three available options for compliance with **Special Condition Nine (9)**. The first method is to provide mitigation through the restoration of an area of degraded habitat (either on the project site, or at an off-site location) that is equivalent in size to the area of habitat impacted by the development. A restoration plan must be prepared by a biologist or qualified resource specialist and must provide performance standards, and provisions for maintenance and monitoring. The restored habitat must be permanently preserved through the recordation of an open space easement. This mitigation method is provided for in **Special Condition Nine (9), subpart A**.

The second habitat impact mitigation method is habitat conservation. This includes the conservation of an area of intact habitat equivalent to the area of the impacted habitat. The parcel containing the habitat conservation area must be restricted from future development and permanently preserved. If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage could be used to provide habitat impact mitigation for other development projects that impact ESHA. This mitigation method is provided for in **Special Condition Nine (9), subpart B**.

The third habitat impact mitigation option is an in-lieu fee for habitat conservation. The fee is based on the habitat types in question, the cost per acre to restore or create the comparable habitat types, and the acreage of habitat affected by the project. In order to determine an appropriate fee for the restoration or creation of chaparral and coastal sage scrub habitat, the Commission's biologist contacted several consulting companies that have considerable experience carrying out restoration projects. Overall estimates varied widely among the companies, because of differences in the strategies employed in planning the restoration (for instance, determining the appropriate number of plants or amount of seeds used per acre) as well as whether all of the restoration planting, monitoring and maintenance was carried out by the consultant or portions are subcontracted. Additionally, the range of cost estimates reflect differences in restoration site characteristics including topography (steeper is harder), proximity to the coast (minimal or no irrigation required at coastal sites), types of plants (some plants are rare or difficult to cultivate), density of planting, severity of weed problem, condition of soil, etc. Larger projects may realize some economy of scale.

Staff determined the appropriate mitigation for loss of coastal sage scrub or chaparral ESHA should be based on the actual installation of replacement plantings on a disturbed site, including the cost of acquiring the plants (seed mix and container stock) and installing them on the site (hydroseeding and planting). Three cost estimates were obtained for the installation of plants and seeds for one-acre of restoration. These estimates were \$9,541, \$12,820, and \$13,907 per acre of plant installation. The Commission finds it appropriate to average the three estimates of plant installation to arrive at the reasonable in-lieu fee to mitigate for the loss of ESHA associated with the approval of development within an ESHA. Based on this averaging, the

required in-lieu fee for habitat mitigation is \$12, 000 (rounded down from the average figure of \$12,089 to simplify administration) per acre of habitat.

The Commission finds that the in-lieu fee of \$12,000 per acre is appropriate to provide mitigation for the habitat impacts to ESHA areas where all native vegetation will be removed (building site, "A" zone required for fuel modification, and proposed road) and where vegetation will be significantly removed and any remaining vegetation will be subjected to supplemental irrigation (the "B" zone or any other irrigated zone required for fuel modification, brush clearance areas required for the residence offsite, and brush clearance areas adjacent to the proposed road). In these areas, complete removal or significant removal of ESHA, along with irrigation, completely alters the habitat and eliminates its value to the native plant and animal community.

ESHA modified for the "C" zone that is thinned but non-irrigated (required for fuel modification) is certainly diminished in habitat value, but unlike the building site, proposed road, "A" zone, "B" zone, and any other irrigated zone, habitat values are not completely destroyed. Native vegetation in the "C" zone is typically required to be thinned, and shrubs must be maintained at a certain size to minimize the spread of fire between the individual plants. This area is not typically required to be irrigated. As such, the Commission finds that it is not appropriate to require the same level of in-lieu fee mitigation for impacts to ESHA within a non-irrigated "C" zone required for fuel modification. Although the habitat value in the "C" zone (or any other non-irrigated zone) is greatly reduced, it is not possible to precisely quantify the reduction. The Commission's biologist believes that the habitat value of non-irrigated fuel modification zones is reduced by at least 25 percent (and possibly more) due to the direct loss of vegetation, the increased risk of weed invasion, and the proximity of disturbance. The Commission finds that it is also less costly and less difficult to restore chaparral habitat when some of the native vegetation remains, rather than when all of the native habitat is removed. Because of the uncertainty and the inability to precisely quantify the reduction in habitat value, the Commission concludes that it is warranted to impose a mitigation fee of \$3,000 per acre (one quarter of the cost of full restoration) for the "C" zone or other non-irrigated fuel modification zone.

In this case, the applicants' approved fuel modification plan (approved by the Los Angeles County Fire Department) shows the use of the standard three zones of vegetation modification. Zone "A" (setback zone) and a reduced Zone "B" (irrigation zone) are shown in a radius extending approximately 50 feet from the proposed structures. A "C" Zone (thinning zone) is provided for a distance of 100 feet beyond the "A" and "B" zones. As discussed above, the ESHA area affected by the proposed development does not include the existing access road footprint and the portions of the proposed project site identified as "barren" or "ruderal" by the applicant's biologist (**Exhibit 11**) since these areas were previously denuded of ESHA prior to the effectiveness date of the Coastal Act and have not recovered. As such, the ESHA areas that will be impacted by the proposed project are the proposed building site (with the exception of the areas identified as "barren" or "ruderal" by the applicant's biologist in **Exhibit 11**), the required fuel modification and brush clearance areas on the slopes beyond the proposed building site, the proposed area of access road improvements (outside of the existing road footprint as defined above), and the required brush clearance area for the improved access road. The appropriate in-lieu fee calculation would then be based on \$12,000 per acre for the area of the proposed building site (with the exception of the areas identified as "barren" or "ruderal" by the applicant's biologist in **Exhibit 11**), proposed access road improvements, brush clearance area, and any irrigated fuel modification area (the "A" and "B" Zones) and \$3,000 per acre of non-irrigated fuel modification area (zone "C").

Should the applicant choose the in-lieu fee mitigation method, the fee shall be provided to the Mountains Recreation and Conservation Authority for the acquisition or permanent preservation of natural habitat areas within the coastal zone. This mitigation method is provided for in **Special Condition Nine (9), subpart C**.

3. Additional Actions

The Commission has determined that in conjunction with siting new development to minimize impacts to ESHA, additional actions can be taken to minimize adverse impacts to ESHA.

The Commission finds that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants species indigenous to the Malibu/Santa Monica Mountains area. Adverse effects from such landscaping result from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the Malibu/Santa Monica Mountains area. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area, **Special Condition Three (3)** requires that all landscaping, including landscaping on the subject site and along the access road, consist primarily of native plant species and that invasive plant species shall not be used.

The Commission notes that streams and drainages, such as the blue line stream and other natural drainages located on the subject site and along the access road, provide important habitat for wetland and riparian plant and animal species. Section 30231 of the Coastal Act provides that the quality of coastal waters and streams shall be maintained and restored whenever feasible through means such as: controlling runoff, preventing interference with surface water flows and alteration of natural streams, and by maintaining natural vegetation buffer areas. In past permit actions the Commission has found that new development adjacent to coastal streams and natural drainages results in potential adverse impacts to riparian habitat and marine resources from increased erosion, contaminated storm runoff, introduction of non-native and invasive plant species, disturbance of wildlife, and loss of riparian plant and animal habitat. The subject site contains numerous drainage courses, including a USGS designated blue line stream. In addition, several drainage courses, some of which are tributary to a second USGS designated blue line stream, cross the access road that the applicant proposes to improve. As such, the Commission finds that potential adverse effects of the proposed development on riparian habitat of this stream may be further minimized through the implementation of a drainage and polluted runoff control plan, which will ensure that erosion is minimized and polluted run-off from the site is controlled and filtered before it reaches natural drainage courses within the watershed. Therefore, the Commission requires **Special Condition Two (2)**, the Drainage and Polluted Runoff Control Plan, which requires the applicant to incorporate appropriate drainage devices and Best Management Practices (BMPs) to ensure that run-off from the proposed structures, impervious surfaces, and building pad area is conveyed offsite in a non-erosive manner and is treated/filtered to reduce pollutant load before it reaches coastal waterways.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby scenic roads, parks, and trails. In addition,

night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. The subject site contains environmentally sensitive habitat. Therefore, **Special Condition Seven (7)**, the Lighting Restriction, limits night lighting of the site in general; limits lighting to the developed area of the site; and specifies that lighting be shielded downward. The restriction on night lighting is necessary to protect the night time rural character of this portion of the Santa Monica Mountains consistent with the scenic and visual qualities of this coastal area. In addition, low intensity security lighting will assist in minimizing the disruption of wildlife traversing this area at night that are commonly found in this rural and relatively undisturbed area. Thus, the lighting restrictions will attenuate the impacts of unnatural light sources and reduce impacts to sensitive wildlife species.

Furthermore, fencing of the site would adversely impact the movement of wildlife through the chaparral and oak woodland ESHA on this parcel. Therefore, the Commission finds it is necessary to limit fencing to the proposed development area, as shown in **Exhibit 3**, as required in **Special Condition Three (3)**.

Finally, the Commission finds that the amount and location of any new development that may be proposed in the future on the subject site is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, pursuant to Section 13250(b)(6) and Section 13253(b)(6) of the Coastal Act, to ensure that any future structures, additions, change in landscaping or intensity of use at the project site, that may otherwise be exempt from coastal permit requirements, are reviewed by the Commission for consistency with the resource protection policies of the Coastal Act, **Special Condition Six (6)**, the future development restriction, has been required. **Special Condition Eight (8)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30230, 30231, and 30240 of the Coastal Act.

E. VISUAL RESOURCES

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline reservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. The subject site is located within a rural area characterized by expansive, naturally vegetated mountains and hillsides.

The project site is located in a scenic area, adjacent to public open space and recreation areas and will be visible at a distance from the Backbone Trail and Mesa Peak Motorway within Malibu Creek State Park, as well as from Corral Canyon Road, a designated scenic road in the certified Malibu/Santa Monica Mountains Land Use Plan (LUP). The applicant proposes to construct a two-story, 6,221 sq. ft. single family residence, 566 sq. ft. detached three-car garage, two-story, 690 sq. ft. guesthouse, swimming pool, well, water tank, septic system, landscaping (including vegetated screening to the north and west of the proposed residence), driveway, as-built stabilization of an existing oak tree, and approximately 1,590 cu. yds. of grading (1290 cu. yds. cut, 300 cu. yds. fill). The proposed project also includes improvements to an existing approximately 1.36 mile long dirt access road (Puerco Motorway), including paving, widening, construction of retaining walls, drainage improvements, and turnarounds, and approximately 10,050 cu. yds. of grading (8,050 cu. yds. cut, 2,000 cu. yds. fill). The proposed project also includes an offer to dedicate a 10 ft. wide, approximately 1,036 ft. long public trail easement.

The residence is sited below a prominent knoll, but portions of the residence are located on a ridgeline designated as a significant ridgeline in the Malibu/Santa Monica Mountains LUP. The proposed residence will not be visible from Pacific Coast Highway, which is a designated scenic road in the Malibu/Santa Monica Mountains LUP, but it will be visible from Corral Canyon Road, which is also a designated scenic road. In addition, the proposed road improvements may be visible from Pacific Coast Highway and Corral Canyon Road, as well as from the Corral Canyon Park Trail Loop (**Exhibit 3**).

The applicant has minimized the proposed grading for the project through siting and design measures. The applicant has stepped the house into the hillside below a prominent knoll thus reducing its obtrusion into the skyline. In addition, the applicant has located the house in a relatively gently sloping area in contrast to the steep slopes in the immediately vicinity, and adjacent to the southern property line and an existing dirt access road. Any alternative location for the proposed residence would require greater vegetation disturbance and landform alteration, for construction of an access road and/or placement of fill and retaining walls for support of the residence, than the proposed project. Furthermore, siting the proposed project in any alternative location would still impact views from scenic areas.

In addition, no alternative route exists to access the proposed project site, therefore no visually preferable alternative exists to the proposed access road improvements, which involve widening and paving the road and construction of retaining walls and drainage structures in order to meet Los Angeles County Fire Department access standards. The applicant has also employed design measures to minimize grading and landform alteration associated with the proposed road improvements, while conforming to Los Angeles County Fire Department and Public Works Department road standards. Nonetheless, the proposed development will be in an area nearly surrounded by vacant land and undisturbed hillside terrain. As the proposed residence and road will be unavoidably visible from scenic viewing areas, the Commission finds it necessary to require mitigation measures to minimize visual impacts associated with development of the project site.

Requiring that all structures be finished in a color consistent with the surrounding natural landscape and, further, requiring that windows of the proposed residence be of a non-reflective glass type, can minimize impacts on public views. In addition, surfacing structures, such as retaining walls, to be textured and colored in a way that is similar to the natural rock and ground in the surrounding landscape, can reduce the visual obtrusiveness of development. To ensure visual impacts associated with the colors and textures of the structures and the potential glare of the window glass are minimized, the Commission requires the applicant to use colors

compatible with the surrounding environment and non-glare glass, as detailed by **Special Condition Five (5)**.

Visual impacts associated with proposed grading and structural development can be further reduced by the use of appropriate and adequate landscaping. Thus, **Special Condition Three (3)** requires the applicant to prepare a landscape plan relying mostly on native, noninvasive plant species to ensure that the vegetation on site and along the access road remains visually compatible with the native flora of surrounding areas. Implementation of **Special Condition Three (3)** will soften the visual impact of the development from public views. To ensure that the final approved landscaping plans are successfully implemented, **Special Condition Three (3)** also requires the applicant to revegetate all disturbed areas in a timely manner and includes a monitoring component to ensure the successful establishment of all newly planted and landscaped areas over time.

Regarding future developments or improvements, certain types of development normally associated with a single-family residence, which might otherwise be exempt, have the potential to impact scenic and visual resources in this area. It is necessary to ensure that any future development or improvements that might otherwise be exempt, are reviewed by the Commission for compliance with the scenic resource policy, Section 30251 of the Coastal Act. Consistent with Section 13250(b)(6) and Section 13253(b)(6) of the Coastal Act, **Special Condition Six (6)**, the Future Development Restriction, will ensure that the Commission will have the opportunity to review future projects for compliance with the Coastal Act. Finally, **Special Condition Eight (8)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the subject property and provides any prospective purchaser with recorded notice that the restrictions are imposed on the subject property.

The proposed project, as conditioned, will not result in a significant adverse impact to scenic public views or character of the surrounding area. Therefore the Commission finds that, as conditioned, the proposed development is consistent with section 30251 of the Coastal Act.

C. Public Access

The Coastal Act requires that maximum public access to and along the coast be provided in new development projects. The Coastal Act also requires new development to provide adequate lands suitable for recreation to serve the needs of new residents.

Coastal Act Section **30210** states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section **30212** states:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,**
- (2) adequate access exists nearby, or,**
- (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.**

Coastal Act Section **30212.5** states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Coastal Act Section **30213** states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Coastal Act Section **30223** states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Coastal Act Section **30252** states:

The location and amount of new development should maintain and enhance public access to the coast by...(6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

In the Santa Monica Mountains, the existing system of heavily used historic trails located on private property has been adversely impacted by the conversion of open lands to housing. These trails have become important and commonly used recreational assets and a means of providing access to and links between natural, scenic, and recreational areas in the mountains.

The project area, including the proposed building site and the proposed improvements along a 1.36 mile long segment of Puerco Motorway, are situated on and immediately below a south-trending ridge east of Corral Canyon. Adjacent land in all directions is vacant and contains relatively undisturbed native chaparral and oak woodland vegetation.

Puerco Motorway is part of a network of unpaved roads constructed by Los Angeles County to provide access for the Fire Department in remote areas for fire-fighting purposes. Puerco Motorway is shown as a fire road on the Department of County Forester and Fire Warden, Divisional Map No. 1, Battalion 5, 1950 edition. This road is also visible in an aerial photograph from 1958.

According to the Los Angeles County Fire Department, these fire roads are maintained by the Fire Department for dry-weather access. The fire roads are not paved. The County does not hold easements over most of these roads, but rather uses and maintains them by agreement with the underlying property owners. Should a property owner not agree to the Fire department's maintenance or use of a fire road, then the Fire Department would not be able to use the road to access an area for fire-fighting.

In addition to their use for fire-fighting purposes, many fire roads are used extensively by the public in the Santa Monica Mountains for recreational purposes. Wide, graded roads are attractive to hikers, equestrians, and more recently, mountain bikers as routes to traverse, and in many cases, to reach public recreation areas. In this case, Puerco Motorway is shown as a multi-use trail on the Malibu Creek State Park Preliminary General Plan and Draft Environmental Impact Report, and as a trail on the Santa Monica Mountains National Recreation Area Interagency Trails Management Plan. In addition, a portion of Puerco Motorway is shown in the certified 1986 Malibu-Santa Monica Land Use Plan (LUP) as a portion of the Coastal Slope Trail (**Exhibit 3**). Puerco Motorway connects to the Mesa Peak Trail, which leads to Malibu Creek State Park and the Backbone Trail, as well as to recreation areas throughout the Santa Monica Mountains via the proposed Coastal Slope Trail. The Commission has received several letters from individuals stating that they have for many years used Puerco Motorway for recreation.

Evidence exists of historic public use of the Puerco Motorway for hiking, biking, and equestrian use, including potential prescriptive rights, which would be affected by the proposed development. Additionally, the increased demands caused by residential buildout in this area make it necessary to ensure that new development does not interfere with any public right of access to continued use of the trail that may exist now or in the future.

As noted above, the applicant proposes multiple improvements to Puerco Motorway, including paving, widening, construction of retaining walls, drainage improvements, and turnarounds, and approximately 10,050 cu. yds. of grading (8,050 cu. yds. cut, 2,000 cu. yds. fill). The majority of these improvements are located outside of the applicant's property, within a 40 foot wide easement for ingress and egress held by the applicant, with the exception of an approximately 500 foot segment of the approximately 1,000 feet of Puerco Motorway that exists on the applicant's parcel.

The proposed improvements will result in the paving of the entire roadbed over most of the length of the motorway. Thus the proposed improvements will significantly reduce the value of Puerco Motorway for recreational users, particularly equestrian users and mountain bikers who seek, and to some extent rely on, dirt surfaces to recreate. Furthermore, the owner of the property containing the majority of Puerco Motorway has expressed interest in dedicating a public trail easement along the length of Puerco Motorway. By significantly reducing the potential value of Puerco Motorway as a recreational trail, the proposed improvements could thus prevent the dedication and future use of such a trail easement.

The applicant proposes an offer-to-dedicate a 10 foot wide trail easement roughly parallel to and approximately 15 - 40 feet downslope of the approximately 1,000 foot section of Puerco Motorway that crosses the applicant's property. However, although the applicant has permission to undertake the road improvements on the neighbor's property, the applicant is not able to offer to dedicate a trail easement outside of the boundaries of its property. Therefore, in order to ensure that the proposed road improvements do not significantly reduce the potential value of Puerco Motorway for recreational users, it is necessary to require the submittal of revised plans,

as detailed in **Special Condition Sixteen (16)**. **Special Condition Sixteen (16)** requires the applicant to submit, for the review and approval of the Executive Director, revised plans showing a three to five foot wide portion of the road bed, running the entire length of the proposed road improvements (except where the proposed improvements occupy the entire width of the 40 foot wide easement), maintained as unpaved area. **Special Condition Sixteen (16)** does not obligate the applicant or adjacent landowner to provide public access along the fire road; it instead preserves the recreational value of Puerco Motorway should public access become formalized. **Special Condition Sixteen (16)** requires that if it is necessary to widen the road to accomplish this requirement, such widening shall be achieved by construction of retaining walls no larger than six feet in height, and subject to the structural appearance requirements provided in **Special Condition Five (5)**. As previously discussed, the owner of the property containing the majority of Puerco Motorway has indicated a willingness to dedicate a trail easement along the road. This trail may be located partly adjacent to the paved portion of the road and partly off of the road, but parallel to it. **Special Condition Sixteen (16)** allows the applicant to apply for an amendment to modify the plan of the unpaved area or to eliminate this requirement should an alternative trail easement be dedicated immediately parallel to the segment of Puerco Motorway (located outside of the applicant's property) on which the proposed road improvements are proposed.

As noted above, the applicant proposes to record an offer-to-dedicate a 10 foot wide non-exclusive public trail easement roughly parallel to and approximately 15 - 40 feet downslope of the approximately 1,000 foot section of Puerco Motorway that crosses the applicant's property. In order to implement this proposal, and thereby ensure continued recreational access through the applicant's property, **Special Condition Fifteen (15)** has been included in order to implement the applicant's voluntary offer-to-dedicate this public hiking and equestrian trail easement prior to the issuance of the coastal development permit.

Finally, in order to ensure that any public rights that may exist on the property or on Puerco Motorway are protected, **Special Condition Eighteen (18)** clarifies that approval of this permit shall not constitute a waiver of any public rights that may exist on the property or on the existing dirt access road to the property. **Special Condition Eighteen (18)** further requires that the permittee not use this permit as evidence of a waiver of any such public rights.

The Commission therefore finds that the proposed project, as conditioned, is consistent with Sections 30210, 30212, 30212.5, 30213, 30223, and 30252 of the Coastal Act.

F. VIOLATIONS

Unpermitted development has occurred on the subject site including, but not limited to, as-built stabilization of an existing oak tree. The unpermitted development occurred prior to submission of this permit application. The subject permit application includes a request for after-the-fact approval of the unpermitted development, as well as the new development proposed in the subject application. In order to ensure that the matter of unpermitted development is resolved in a timely manner, **Special Condition Seventeen (17)** requires that the applicant satisfy all conditions of this permit that are prerequisite to the issuance of this permit within 90 days of Commission action, or within such additional time as the Executive Director may grant for good cause.

Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

G. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act states:

Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed project will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3 of the Coastal Act. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the County's ability to prepare a Local Coastal Program for the Malibu/Santa Monica Mountains area that is consistent with the policies of Chapter 3 of the Coastal Act as required by §30604(a).

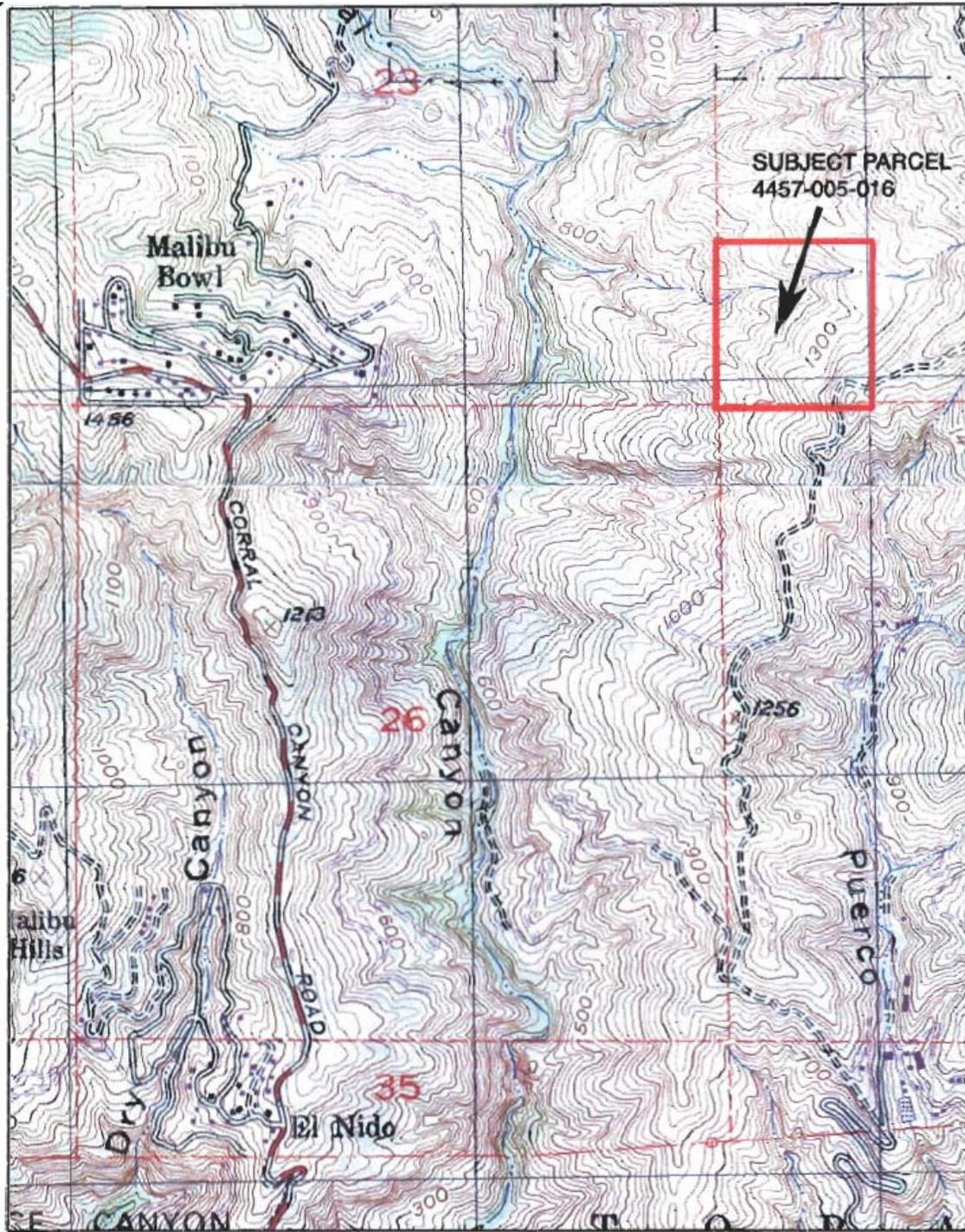
H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

As discussed in detail above, project alternatives and mitigation measures have been considered and incorporated into the project. The Commission incorporates its findings on conformity with Coastal Act policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed herein, the project has been conditioned in order for it to be found consistent with the policies of the Coastal Act. Mitigation measures have been required. Five types of mitigation actions include those that are intended to avoid, minimize, rectify, reduce, or compensate for significant impacts of development. Mitigation measures required as part of this coastal development

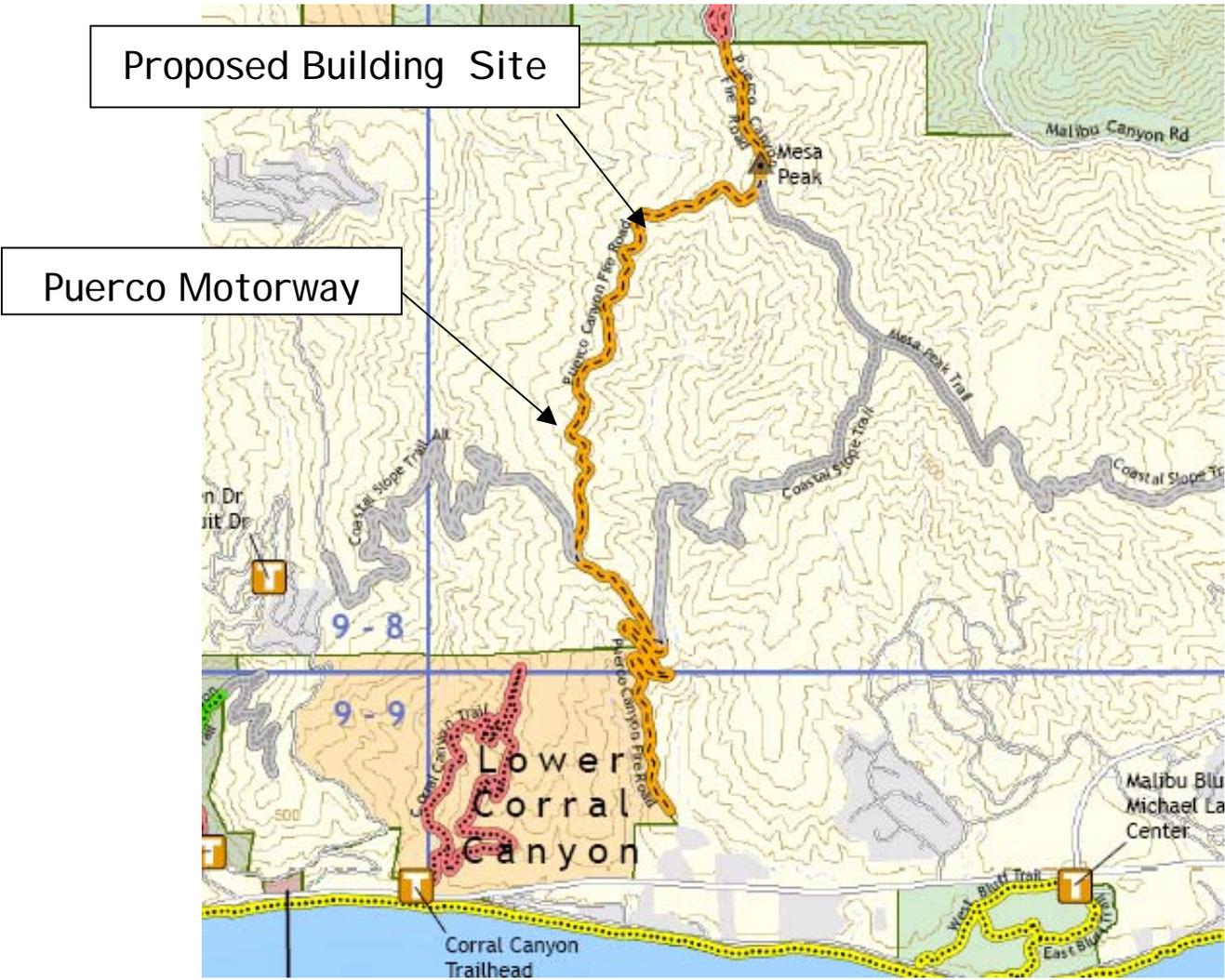
permit include the avoidance of impacts to ESHA through clustering structures, prohibiting development outside of the approved development area as required by the granting of an open space and conservation easement, and identifying the appropriate location for disposal of excess cut material. Mitigation measures required to minimize impacts include requiring drainage best management practices (water quality), interim erosion control (water quality and ESHA), limiting lighting (ESHA), restricting structure color (visual resources), requiring future improvements to be considered through a CDP, and employing non-chlorine water purification for the swimming pool (water quality). Finally, the habitat impact mitigation condition is a measure required to compensate for impacts to ESHA.

The Commission finds that, the proposed project, as conditioned, will not have any significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.



PUERCO HOUSE APN 4457-005-016
USGS TOPOGRAPHY
MALIBU BEACH QUADRANGLE
(1995)

Exhibit 2
CDPA No. 4-05-153
Topographic Map



Santa Monica Mountains National Recreation Area
Trail Management Plan
Trail Key

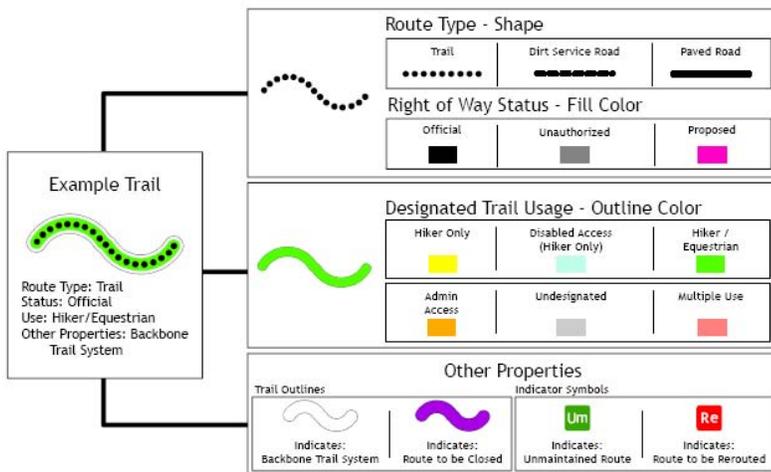
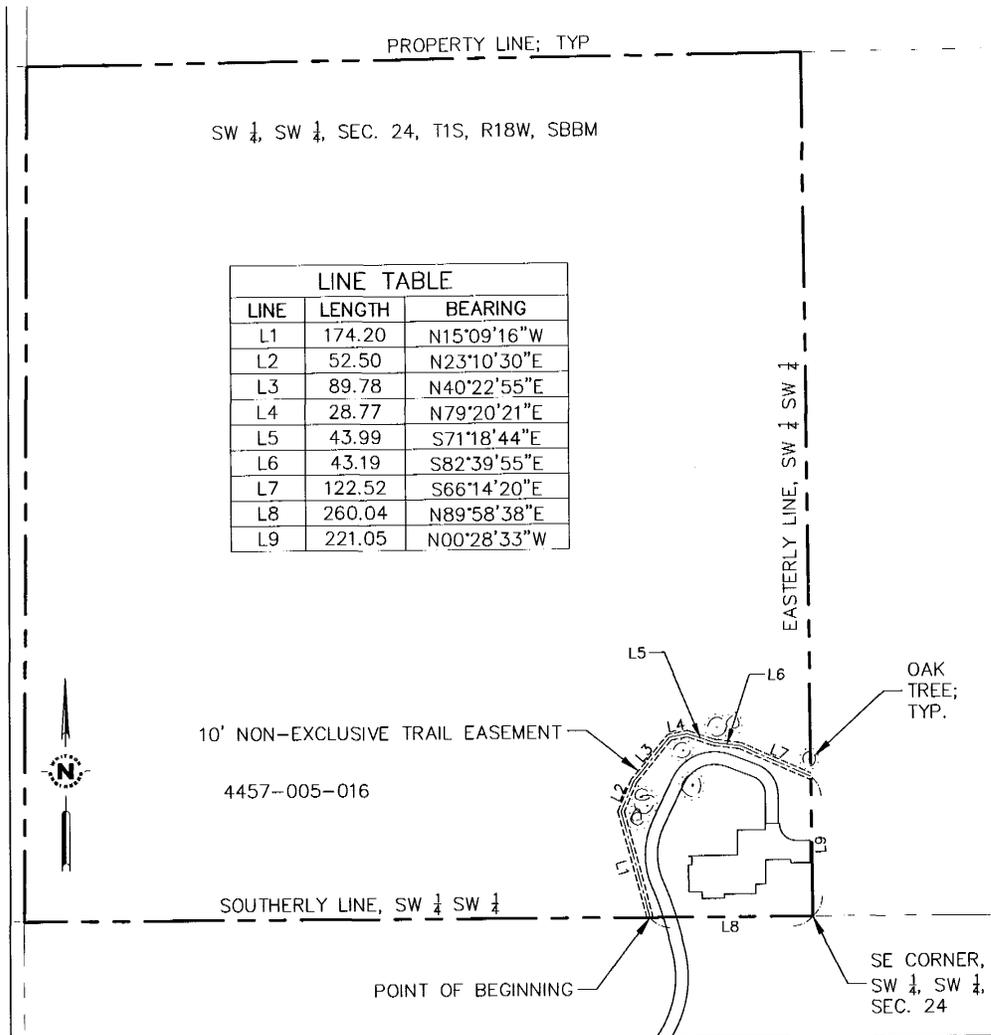


Exhibit 3
CDPA No. 4-05-153
Trail Map



LINE TABLE		
LINE	LENGTH	BEARING
L1	174.20	N15°09'16"W
L2	52.50	N23°10'30"E
L3	89.78	N40°22'55"E
L4	28.77	N79°20'21"E
L5	43.99	S71°18'44"E
L6	43.19	S82°39'55"E
L7	122.52	S66°14'20"E
L8	260.04	N89°58'38"E
L9	221.05	N00°28'33"W

WE	EXHIBIT B	DATE: 9/20/06	SHEET
	LOS ANGELES COUNTY CALIFORNIA	SCALE: 1" = 200'	1
	10' NON-EXCLUSIVE TRAIL EASEMENT	DRAWN: DM	
	DRAWING PATH: PUERCO TRAIL EASEMENT.dwg	CHECKED: BH	PROJECT #: 1039.00

WHITSON ENGINEERS - 1960 East Grand Avenue, Suite 570 - El Segundo, California 90245 - TEL: 310 322-3205 - FAX: 310 322-3206 - www.whitsonengineers.com

Exhibit "A"
Legal Description

Los Angeles County, California

Parcel 1

Certain real property situate in Section 24, Township 1 South, Range 18 West, San Bernardino Base and Meridian, County of Los Angeles, State of California, as shown on the official plat thereof, described as follows:

A portion of the Southwest Quarter of the Southwest Quarter of said Section 24, more particularly described as follows:

A strip of land 10 feet wide, lying 5 feet on each side of the following described centerline:

Beginning at a point on the Southerly line of the Southwest Quarter of the Southwest Quarter of said Section 24, said point being distant North 89° 58' 38" East, 260.04 feet from the Southeast corner of the Southwest Quarter of the Southwest Quarter of said Section 24; thence

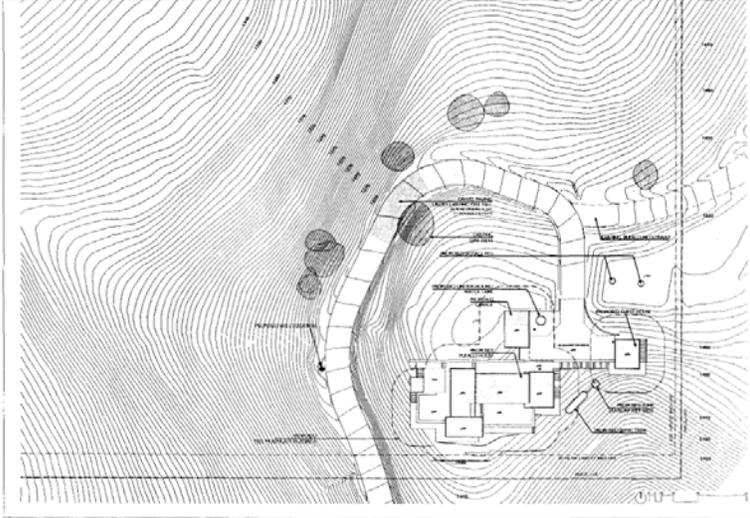
- 1) North 15° 09' 16" West, 174.20 feet; thence
- 2) North 23° 10' 30" East, 52.50 feet; thence
- 3) North 40° 22' 55" East, 89.78 feet; thence
- 4) North 79° 20' 21" East, 28.77 feet; thence
- 5) South 71° 18' 44" East, 43.99 feet; thence
- 6) South 82° 39' 55" East, 43.19 feet; thence
- 7) South 66° 14' 20" East, 122.52 feet, more or less, to a point on the Easterly line of the Southwest Quarter of the Southwest Quarter of said Section 24, said point being distant North 00° 28' 33" West, 221.05 feet from the Southeast corner of the Southwest Quarter of the Southwest Quarter of said Section 24.

The sidelines of said strip of land shall be shortened or prolonged to terminate on said Southerly and Easterly lines.

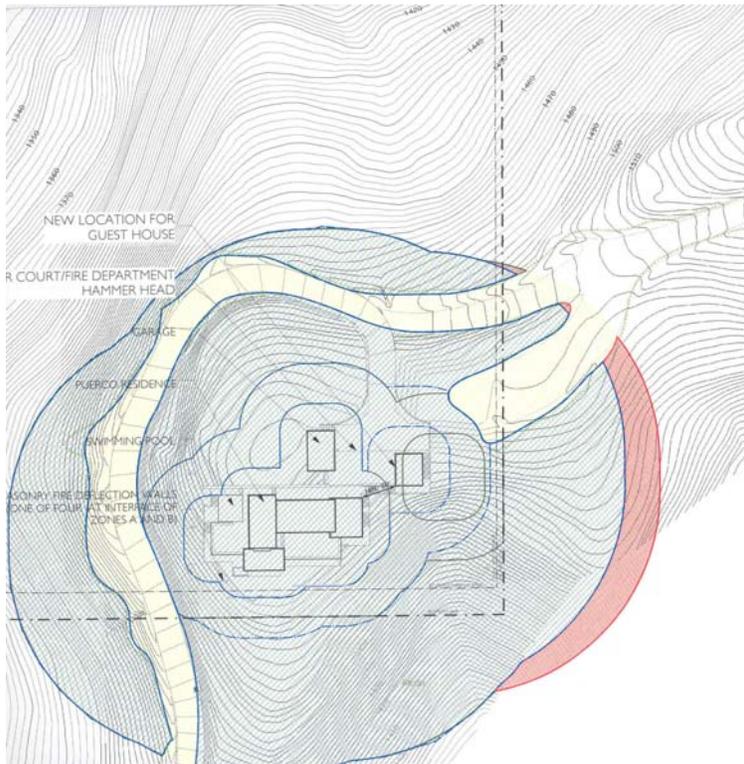
END OF DESCRIPTION

Exhibit 4
CDPA No. 4-05-153
Proposed Public Trail Easement

Originally Proposed Site Plan



Revised Site Plan



PUERCO RESIDENCE
 PUERCO MOTORWAY
 MALIBU, CA 90265

COMPARISON OF OLD AND REDUCED
 150' FUEL MODIFICATION AREA
 PERMIT APPLICATION NUMBER
 4-05-153
 DATE 09/14/06

 Existing Disturbed Area

150' FUEL MODIFICATION AREA CALCULATION:

OLD Development Area and Irrigated Fuel Modification Zones [A = 20', B = 30' and C = 100']:

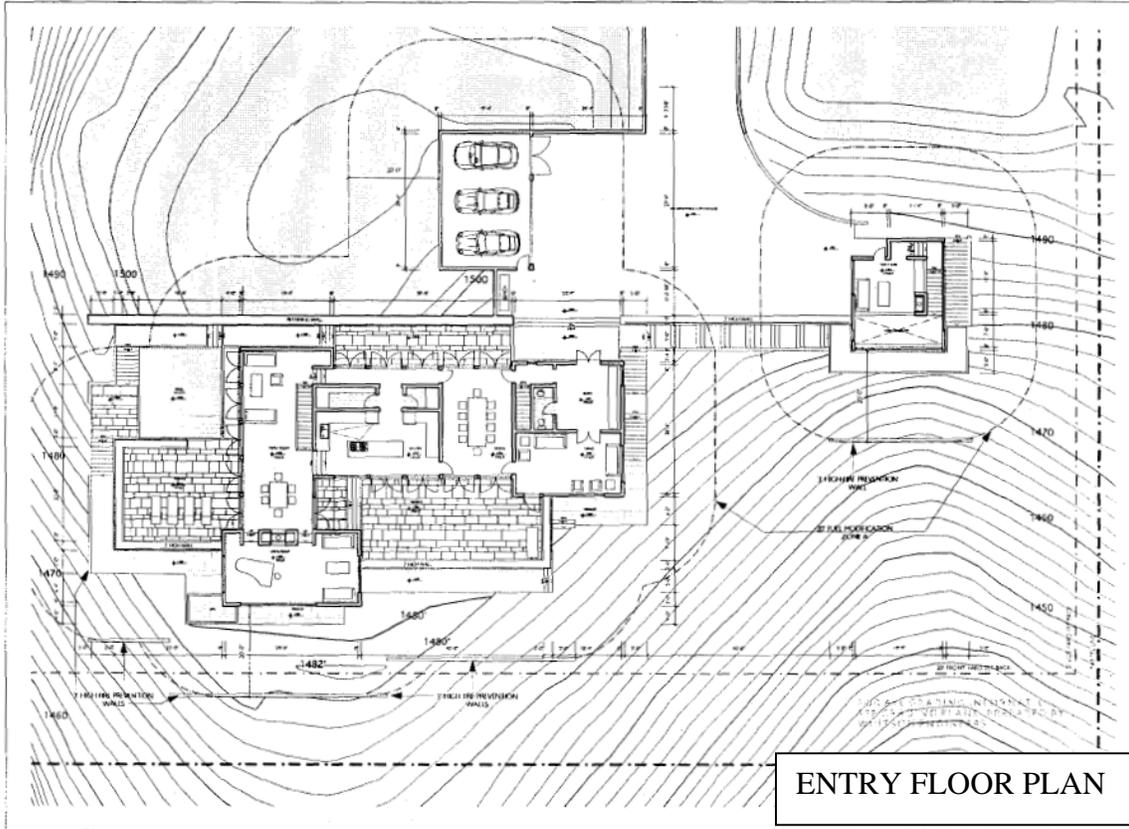
 Area Zone A to C = 129,789.75 sqft or 2.97 acre

NEW Development Area and Irrigated Fuel Modification Zones [A = 20', B = 30' and C = 100']:

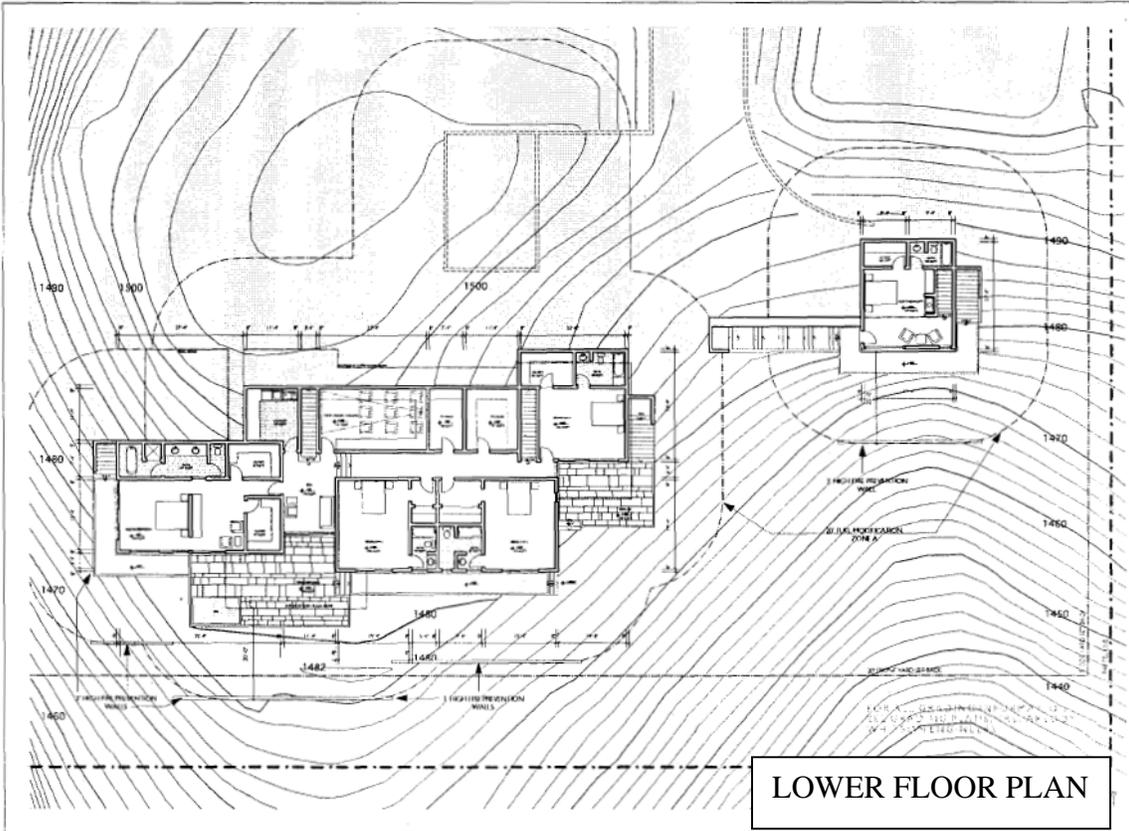
 Area Zone A to C = 120,299.7 sqft or 2.76 acre

 TOTAL REDUCED FUEL MODIFICATION AREA = 9,540.05 sqft or 0.21 acre

Exhibit 5
 CDPA No. 4-05-153
 Original and Revised Site Plan

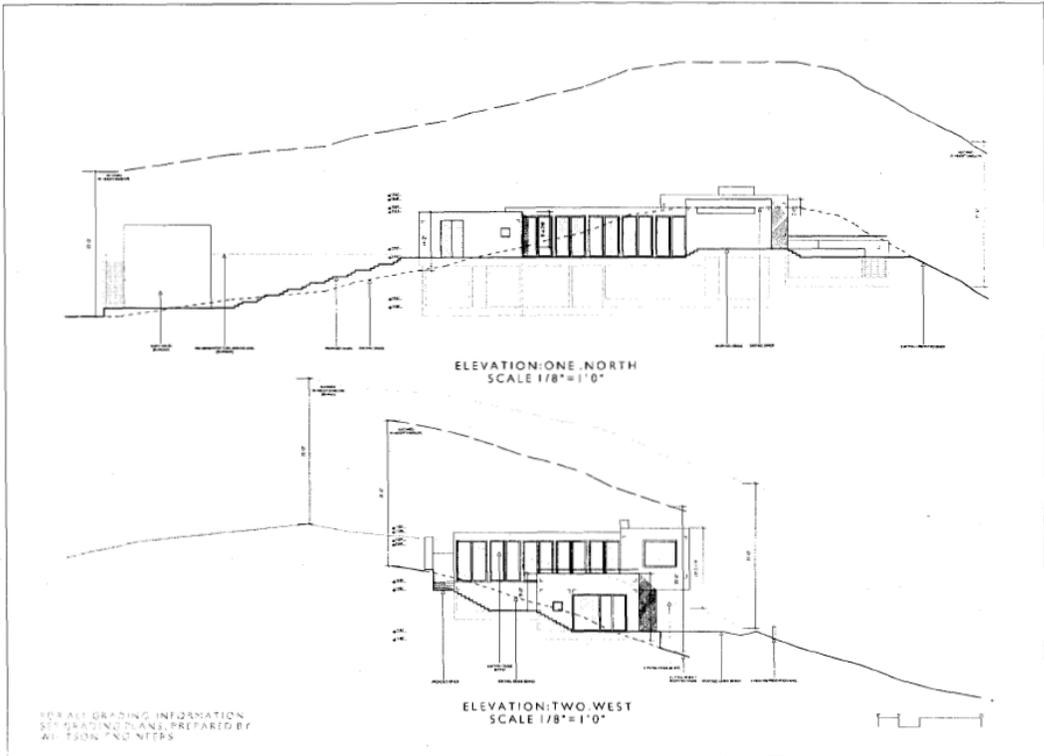


ENTRY FLOOR PLAN

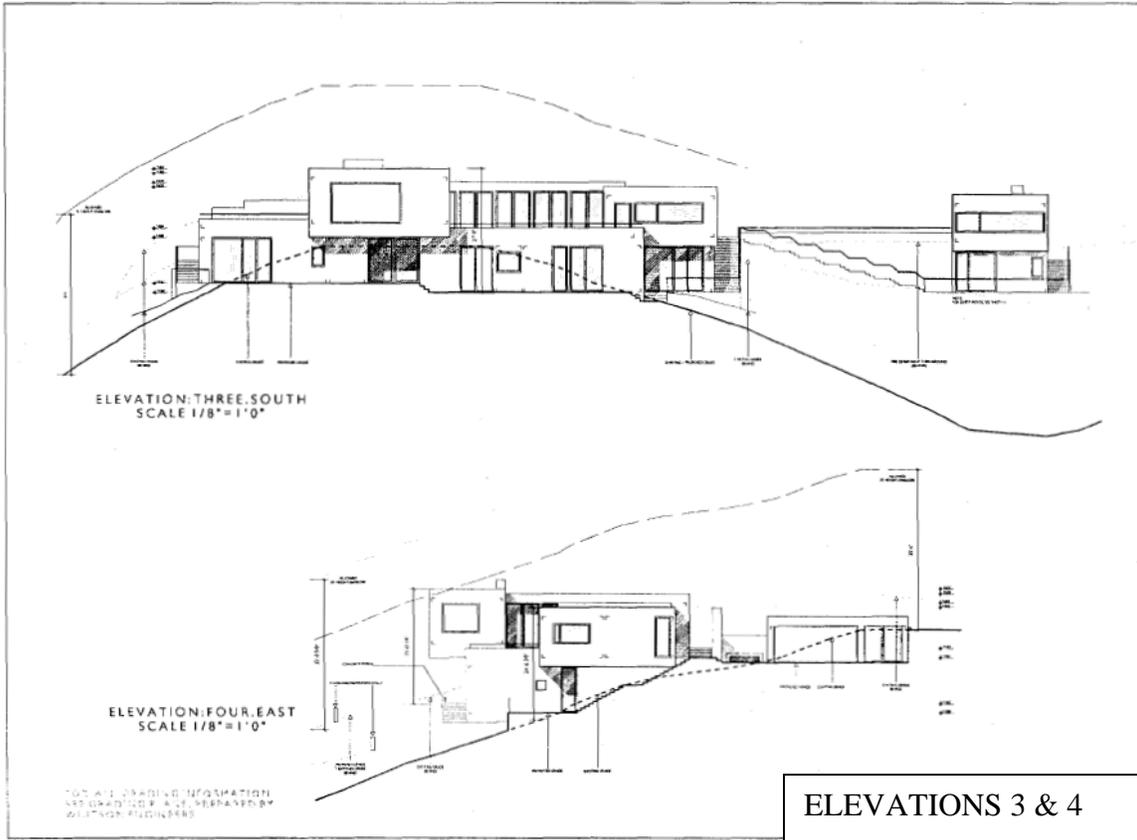


LOWER FLOOR PLAN

Exhibit 6
CDPA No. 4-05-153
Floor Plans



ELEVATIONS 1 & 2



ELEVATIONS 3 & 4

Exhibit 7
CDPA No. 4-05-153
Elevations

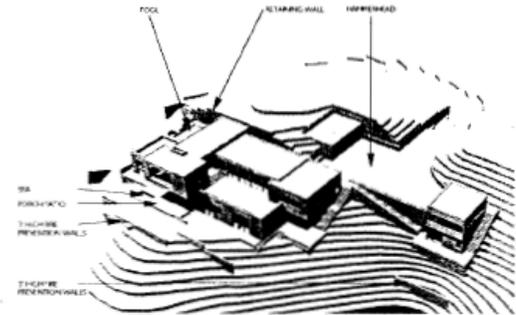
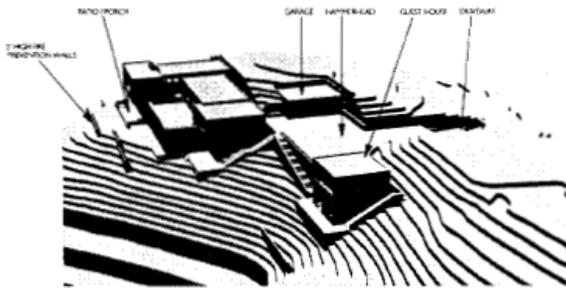
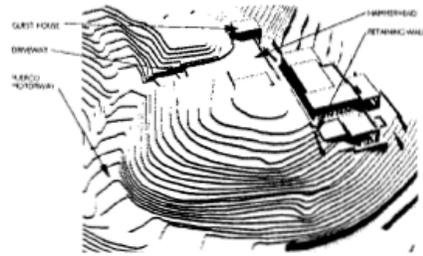
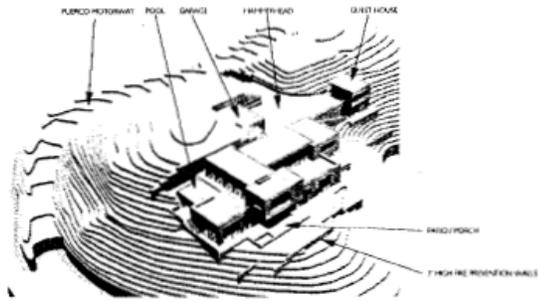


Exhibit 8
CDPA No. 4-05-153
Perspectives

[CLICK HERE FOR EXHIBITS PART 1](#)

[CLICK HERE FOR EXHIBITS PART 2](#)